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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-6853

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Peitioner, LEAH LYNN PARRISH WEBB, hereby moves this Court to grant her leave to file the attached Petition for Writ of Certiorari to the Supreme Court of the State of Georgia without prepayment of costs and to proceed in forma pauperis.

The Petitioner's affidavit in support of this motion is attached hereto.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No._____

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

AFFIDAVIT

I, LEAH LYNN PARRISH WEBB, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs of fees: 1. I am the Petitioner in the above-entitled case. 2. Because of my poverty I am unable to pay the costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. 5. I am being represented by an attorney at no cost to myself. 6. The nature of said cause is briefly stated as follows:

Pursuant to a Georgia divorce decree in 1977, my son and I moved to Florida. In February of 1979, my ex-husband removed my son from Florida and took him back to Georgia. I obtained a judgment in a Florida Court ordering Mr. Webb to return my son to me. Nevertheless, Mr. Webb filed a case in Georgia, seeking custody of my son, and prevailed. The Georgia trial and Supreme Courts refused to dismiss the case by recognizing the finality of the Florida decree. Not only did the decree give my ex-husgand custody, it gave me no visitation rights, and I have not been allowed to see my son since May of 1979.

Leah Lynn Parrish Webb

Sworn to and subscribed before me,

this 16 day of June, 1980.

Notary Public

Notary Public, State of Florida at Large
My commission expires Oct. 26, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-6353

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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INDEX

Page

Opinion Below..... 1

Jurisdiction..... 1

Question Presented..... 2

Statement of the Case..... 2

How Federal Question is Presented..... 3

Reasons for Granting the Writ...

1. The Decision Below Violates Established Principles Which Dictate That a Court Accord Full Faith and Credit to an Earlier Court's Custody Decree Which was Rendered in Accordance With Due Process Standards, and the Propriety of Which Could Not have Changed in the Intervening Period..... 4

2. The Application of the Full Faith and Credit Clause to Custody Decrees is an Essential Element in the Effective Use of the Uniform Child Custody Jurisdiction Act, One Purpose of Which is to Deter the Abduction of Children..... 9

Conclusion..... 11

Appendix

1. Opinion of Georgia Supreme Court

2. Dissenting Opinion and Denial of Rehearing

CITATIONS

Cases:

Beggs v. Beggs, 208 Ga. 415 (1951)..... 7
Belden v. Strickland, 218 Ga. 105 (1962)..... 7
Ferster v. Ferster, 220 Ga. 319 (1964)..... 7
Ford v. Ford, 371 U.S. 187 (1962)..... 6
Halvey v. Halvey, 330 U.S. 610 (1947)..... 5, 6
Kovacs v. Brewer, 356 U.S. 604 (1957)..... 6
Matthews v. Matthews, 238 Ga. 201 (1977)..... 9
May v. Anderson, 345 U.S. 528 (1953)..... 5, 6
Reid v. Adams, 241 Ga. 521 (1978)..... 9
Whitaker v. Whitaker, 237 Ga. 895 (1976)..... 7

Miscellaneous:

Bodenheimer, The Uniform Child Custody Jurisdiction Act, Fam. L. Q. 45 (1974)..... 10

6 Family Law Reporter 1113, May 27, 1980..... 9

Sanders, Prevention of Child Stealing: The Need for a National Policy, 11 Loyola of Los Angeles Law Review 829 (1978)..... 6

Stern, Stemming the Proliferation of Parental Kidnapping: New York's Adoption of the Uniform Child Custody Jurisdiction Act, 45 Brooklyn Law Review 89, Fall 1978.. 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. _____

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

The Petitioner, LEAH LYNN PARRISH WEBB, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Georgia Supreme Court entered on April 8, 1980, and its denial of rehearing entered April 22, 1980.

OPINION BELOW

The opinion of the Georgia Supreme Court, reported at 245 Ga. 650, appears in the Appendix hereto. The dissenting opinion and denial of rehearing also appear therein.

JURISDICTION

The Georgia Supreme Court affirmed the trial court's ruling on April 8, 1980. Following Petitioner's Motion for Rehearing filed on April 14, 1980, said Court denied rehearing on April 22, 1980.

This Court has jurisdiction pursuant to 28 U.S.C. 1257(3). Jurisdiction is invoked under the certiorari jurisdiction of this Court to review rulings of a state court involving federal constitutional law issues.

QUESTION PRESENTED

The question presented for review is as follows:

Does Article IV, § I of the United States Constitution, demand that Georgia, a signatory to the Uniform Child Custody Jurisdiction Act, give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction over an action to modify a custody decree when no intervening change of circumstances has occurred since the rendition of the Florida decree.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Article IV, § I:

> Full faith and credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress May by general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

STATEMENT OF THE CASE

This petition arises from Mr. Webb's action to modify a Georgia custody award rendered in 1977. Pursuant to such award, Petitioner and her son moved to and established residency in the State of Florida. Contrary to the decree, in February of 1979, the father removed the minor child to his home in Georgia. Petitioner then filed an action in Florida under the Uniform Child Custody Jurisdiction Act to domesticate the 1977 Georgia decree, specify Mr. Webb's visitation rights, and compel him to return the child to Florida. Though personally served, the father made no response or appearance in the Florida action; but a month after taking the child, he filed an action in Georgia to modify the 1977 custody award. Prior to the Georgia trial, Florida entered judgment wholly favorable to Petitioner herein.

Petitioner then sought, under Georgia's Uniform Child Custody Jurisdiction Act, to have Georgia dismiss the Georgia case, according full faith and credit to the Florida judgment. The Georgia court ignored Florida's final judgment, and accepted jurisdiction on the basis of findings of abandonment and state residency, contrary to Florida's findings. Said findings, not relating to the issue of custody itself, could not have been based on any change of circumstances, since the acts in question had already all occurred even before Florida entered judgment.

The appeal raised, among other issues, the question of whether Georgia was required to grant the Florida judgment full faith and credit, and dismiss the Georgia case because the claims raised therein were res judicata. The Supreme Court of Georgia, though recognizing the finality of the Florida judgment, declined to specifically rule on the full faith and credit question presented. However, by ruling that the Florida decree did not preempt Georgia's jurisdiction, and basing its own jurisdiction on findings inconsistent with those of the Florida court, it impliedly rejected the notion that full faith and credit should have been accorded to the Florida decree.

HOW FEDERAL QUESTION IS PRESENTED

The federal question involved was first raised in Petitioner's Eleventh Defense to Plaintiff's complaint, where (as Defendant) she asserted:

> "Plaintiff herein continues to act contrary to the order of the Superior Court of Berrien County, entered September 22, 1977, and also acting in violation of the April 19, 1979, order of the circuit court of Alachua County, Florida (Case No. 79-569-CA) which order should be accorded full faith and credit by this court, as it was made pursuant to relevant Florida law as stated above." (R-7).

The final Florida decree was introduced (T-8; R-55; Exhibit 6) at trial and oral argument was made in support of a motion to dismiss. It was subsequently raised in Petitioner's Enumeration of Errors to the Georgia Supreme Court (Error VI).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW VIOLATES ESTABLISHED PRINCIPLES WHICH DICTATE THAT A COURT ACCORD FULL FAITH AND CREDIT TO AN EARLIER COURT'S CUSTODY DECREE WHICH WAS RENDERED IN ACCORDANCE WITH DUE PROCESS STANDARDS, AND THE PROPRIETY OF WHICH COULD NOT HAVE CHANGED IN THE INTERVENING PERIOD.

The essential question presented for review is the extent to which the full faith and credit clause of the United States Constitution requires two signatories of the Uniform Child Custody Jurisdiction Act to give full faith and credit to each other's custody decrees which are granted in conformance with that Act's mandates. Unlike previous custody cases interpreting the full faith and credit clause, this case does not center on any possible inadequacies of the initial rendering court in terms of its jurisdictional power over the parties to the action. Similarly, the possibility of a significant change in circumstances between the time of the original decree and the second court's review, does not exist here. Since the decisions of the Florida and Georgia trial courts were rendered practically simultaneously, the question is a very pure one. The case squarely places before this Court the question of whether the fact that a final decree deals with custody should give license to other courts to refuse to give full effect to it.

The extent to which the Georgia Supreme Court's ruling herein conflicts with recognized principles on that subject is thus the question on review. A brief explanation of such principles will reveal the inherent conflict between this decision and earlier ones.

Although the full faith and credit clause of the United States Constitution seems absolute on its face, the Supreme Court of the United States has qualified that requirement in some respects when dealing with custody cases. In the last 35 years, at least four cases involving this issue have come before this Court. In Halvey v. Halvey, 330 U.S. 610 (1947), the Supreme Court was faced with the question of whether a New York court had the authority to modify a final custody decree rendered in Florida. While New York had granted some effect to the original Florida decree, it also asserted that it had the right to modify that original judgment in any way it saw fit, in accordance with the "best interests" of the child. This Court, stating that "the state of the forum has at least as much leeway to disregard the judgment, to qualify, or to depart from it as does the state where it was rendered," upheld New York's ruling which had modified the original Florida decree. Halvey, supra at 615. While not directly deciding the extent to which full faith and credit may or may not always require such a result, the Court's opinion clearly did not discourage the forum shopping that often occurs in custody cases. Thereafter, whenever a state was able to acquire subject matter jurisdiction over the custody issue, it felt free to ignore or at least modify previous custody determinations on the grounds that new circumstances had occurred subsequent to the original hearing.

The next case to involve this central question was May v. Anderson, 345 U.S. 528 (1953). In May, the father had been granted custody in an ex parte Wisconsin divorce. When Mr. Anderson filed a habeas corpus case to enforce this decree in Ohio, the Ohio Supreme Court returned possession of the child to him. In an opinion by the United States Supreme Court, Justice Burton, writing for the plurality, concentrated primarily on the issue of whether it was appropriate for the Wisconsin court

to have made its initial ruling when the defendant mother was neither domiciled, resident, nor present in the state when it had ruled on the custody of her children. Thus stated, the Court apparently refused to apply the strict mandates of the full faith and credit clause, primarily because it had some troubling questions about whether in personam jurisdiction had ever existed in the first place, thereby making it distasteful to require that a later court recognize the validity and finality of that initial decree.

Like the Halvey decision, the May decision has been severely criticized. Sanders, Prevention of Child Stealing: The Need for a National Policy, 11 Loyola of Los Angeles Law Review, 829 836 (1978). Like Justice Jackson, many commentators agree that the failure to grant full faith and credit reduces these disputes to lawless battles determined primarily by present possession of the children involved. Id. at 837.

Two later cases apparently continued this trend. Kovacs v. Brewer, 356 U.S. 604 (1957) made it clear that as long as the principal issue was custody of a child, the "best interest of the child" test required that a decree could be modified virtually at any time in accordance with "changed circumstances," thus not giving apparent recognition or effect to an initial final decree. Likewise, in Ford v. Ford, 371 U.S. 187 (1962), the Court again refused to rule that full faith and credit absolutely required a state to fully recognize any child custody decree rendered by a sister state. In Ford, however, there was a serious concern over the adequacy of the initial court proceeding, because the decree was based on a parental agreement which apparently had not been subjected to court approval, and had not been entered into on a basis of any evidence presented before a court.

Thus, in every case in which the United States Supreme Court has dealt with this issue, the final ruling has rested on some tangential element of the case. At the very least, all of these cases seem to require that a second court accord any judgment only so much effect as would the first court, and that it is always appropriate for the second state to make a determination as to whether the procedure in the initial state was adequate to fully decide the issue.

With the exception of the instant case, the Georgia courts have likewise expressed such concerns. While several cases suggest that full faith and credit is absolute on its face, the Georgia Supreme Court has made it clear that this rule is subject to the requirement that the initial rendering state should have assumed jurisdiction under appropriate constitutional standards, and that the judgment should have been made in accordance with fair and rigorous procedures. See Beggs v. Beggs, 208 Ga. 415, 67 S.E.2d 135 (1951); Ferster v. Ferster, 220 Ga. 319, 138 S.E.2d 674 (1964); Beiden v. Strickland, 218 Ga. 105, 126 S.E.2d 670 (1962). Furthermore, in cases involving the enforcement of a judgment rendered in accordance with procedures dissimilar to those adopted by Georgia courts, the Georgia Supreme Court has been willing to recognize such judgments only insofar as it is able to find that the requirements under which the initial decree was made are in strict conformance with due process standards. See Whitaker v. Whitaker, 237 Ga. 895, 230 S.E.2d 486 (1976).

It is clear that the refusal of the Georgia Supreme Court to give full faith and credit to the Florida judgment, and grant Petitioner's writ of habeas corpus, is in conflict with the foregoing general principles enunciated by this Court in cases raising the issue of full faith and credit in custody

matters. While this Court has never stated that full faith and credit is an absolute requirement in such cases, the opinions which have allowed a deviation from an absolute rule have always done so on the basis of some obvious concern for the adequacy of the proceedings in the first instance, or the possibility that circumstances may have changed from the time of the initial decree. No such situation exists here. Immediately following the child's abduction from the state of Florida, the mother sought to have the Florida court assume jurisdiction over the matter under the mandates of the Uniform Child Custody Jurisdiction Act, as adopted in Florida. After making an initial order, the Florida court then proceeded to take testimony from the mother regarding the question of her residency in the state of Florida and the circumstances under which her ex-husband had removed the child from the state. After hearing this testimony, the trial court concluded that the mother and child were Florida residents, that the father had acted improperly, that Florida could restrain him from removing the child from the state, and that it also had the authority to retain jurisdiction over the matter for the purposes of enforcement of the order. Only days after this, the Georgia court concluded that the child's removal from the state of Florida had been necessitated by emergency, that the child was in fact a resident of Georgia, and that it alone had jurisdiction over the cause because the child was domiciled in the state of Georgia at the time Mr. Webb began his proceedings. These findings, being clearly inconsistent with those of the Florida court, were not in any way based on any possible change of circumstances since Florida's entry of judgment. They were in fact a new determination based on exactly the same issues which had been brought to the attention of the Florida court, and as such, the refusal of the courts of Georgia to recognize the finality of the decision of Florida is

directly contrary to the principles enunciated by the United States Supreme Court.

2. THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE TO CUSTODY DECREES IS AN ESSENTIAL ELEMENT IN THE EFFECTIVE USE OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT, ONE PURPOSE OF WHICH IS TO DETER THE ABDUCTION OF CHILDREN.

While Florida and Georgia are only two of the signatories to the Uniform Child Custody Jurisdiction Act, they are by no means alone. To date, at least 44 other states have adopted this act. 6 Fam. L. Rep. 1113, May 27, 1980. Two of the express purposes of the statute are to "deter abductions and other unilateral removals of children undertaken to obtain custody awards" and to "facilitate the enforcement of custody decrees of other states". Ga. Code § 74-502. This Act, incorporating these two essential principles, was obviously formulated in response to the epidemic proportions which child abduction has taken on in the last several years in this country. Stern, Stemming the Proliferation of Parental Kidnapping: New York's Adoption of the Uniform Child Custody Jurisdiction Act, 45 Brooklyn Law Review, 89, Fall 1978.

The Georgia courts, like many others, while expressing grave concerns about "child snatching" (See especially Matthews v. Matthews, 238 Ga. 201, 232 S.E.2d 76 (1977)), have applauded the adoption of the Uniform Act. See also Reid v. Adams, 241 Ga. 521, 246 S.E.2d 655 (1978). Likewise, Congress has considered the possibility of adopting a statute to require that the mandates of the full faith and credit clause be applied to child custody cases (See Proposed H. R. 6786, 95th Congress, First Session, Proposal of April 29, 1977 for "A Bill To Exercise The Power Of Congress Under Article IV Of The Constitution To Declare The Effect Of Certain State Judicial Proceedings Respecting The Custody Of Children"). Thus far, however, these efforts have

been unsuccessful. Nevertheless, most commentators are in agreement that the adoption of a uniform act in most states will increase cooperation among the states and eventually help to stem the tide of child snatching for the purposes of gaining access to more favorable litigation forums.

The Uniform Child Custody Jurisdiction Act, as adopted in Florida and Georgia, has several provisions by which it attempts to reinforce these principles. First, it discourages the courts from determining the question of jurisdiction based solely on the presence or absence of the child in a state. Presence itself does not necessarily confer jurisdiction upon a court, and the absence of a child does not necessarily defeat jurisdiction. Second, it provides that there should be maximum communications between states which may be entertaining similar petitions at the same time, so as to prevent duplication of effort, and the deliberate hiding of proceedings from a court by a litigant from another state. Third, the Act gives courts the right to decline jurisdiction because of the wrongful conduct of a party to the action. Fourth, and perhaps most important, it provides that courts should recognize and give effect to decrees of other states which are rendered in accordance with the mandates of the act itself. See Bodenheimer, The Uniform Child Custody Jurisdiction Act, Fam. L. Q. 45 (1974).

All of these provisions, however, act together to achieve one primary purpose, which is to insure that custody decrees which have been rendered with access to all relevant information are honored and are not disregarded by the parties or the states involved. In the absence of a clear statement by this Court, that the full faith and credit clause requires recognition of child custody decrees rendered in accordance with the mandates of the Act and the requirements of due process,

our states' courts will remain free to ignore decrees rendered in sister states, and will thus continue to encourage child abductions for the purpose of gaining access to more acceptable forums.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Georgia.

Respectfully submitted,

Roy M. Sobelson

John L. Cromartie, Jr.

Mary R. Garden

Attorneys for Petitioner

In the Supreme Court of Georgia

Decided: APR 08 1980

35703. WEBB v. WEBB.

Clarke, J.

This case calls for an interpretation of certain provisions of Georgia's Uniform Child Custody Jurisdiction Act, Code Ann. § 74-501, et seq. The mother appeals an order of the Superior Court of Berrien County modifying a previous final decree of divorce by changing custody from the mother to the father. The court also denied the mother's counterclaim for contempt and her application for a writ of habeas corpus.

The evidence authorized a finding that subsequent to the entrance of a final decree of divorce entered in Berrien County September 22, 1977, giving custody of the minor child to the mother, the mother moved some six times and finally established residency near Gainesville, Florida. On February 17, 1979, the mother left the six-year old child of the parties without adult supervision at her home and flew to Miami for a weekend. Having been contacted by Florida authorities, the father went to Florida, picked up the child and returned to his home in Berrien County, Georgia.

On March 8, 1979, the wife filed an action in Alachua County, Florida, praying for an injunction for the purpose of enforcing the Georgia decree and seeking an order limiting visitation rights of the father. On March 23, 1979, before the issuance of a permanent order in the Florida action, the father filed a complaint in Berrien County, Georgia, asking that the original Georgia decree be modified to change custody of the minor child to him. The mother counterclaimed for contempt and sought a writ of habeas corpus. Subsequent to the filing of the complaint in Georgia by the father, and prior to any hearing in Georgia on the matter, the Florida court entered a final order on April 18, 1979, establishing the Georgia decree as the judgment of the Florida court and modifying the father's visitation rights.

The Superior Court of Berrien County heard evidence on the father's complaint on May 10, 1979, and on June 21, 1979, entered an order changing custody to the father and ruling that the father was not in contempt as alleged by the counterclaim. The mother's counterclaim for habeas corpus was likewise denied. The mother appeals from this order of the Superior Court of Berrien County.

(1) The mother contends that Georgia was not an appropriate or convenient forum for determination of the custody of the child because of insufficient contacts between the parties and this State. While it is true that the child was in Florida with the mother under a valid original decree of the Berrien County court giving custody to the mother, we find that the Georgia court was authorized under the evidence to find that the father retrieved the child in the face of an emergency situation created by the mother. The circumstances of the child's retrieval by the father were sufficient to afford Georgia jurisdiction under Ga. Code Ann. § 74-504(a)(3).

(2) The mother also argues that the pendency of the Florida action preempted Georgia jurisdiction. The action was pending in Florida at the time the father filed his suit, and while the father did not properly inform the Georgia court of this fact, this information was fully supplied to the Georgia court by the mother in her motion to dismiss. This fact placed a duty upon the trial court to confer with the Florida court with a view toward determining the appropriate forum. Code Ann. § 74-507. This was not done. Correspondingly, the Florida court, having notice in the mother's pleadings that an action might be pending in Georgia, was under a duty to confer with the

Georgia court. There is nothing in the record before this court to indicate any effort on the part of the Florida court to fulfill this duty prior to entering its final judgment.

Among the primary purposes of the Uniform Child Custody Jurisdiction Act is to avoid overlapping adjudication and to prevent judgment races. In this case, neither state made a contribution toward that goal. The Georgia court exercised its jurisdiction with knowledge of the case in Florida. The Florida court entered its final order with notice that an action might be pending in Georgia.[1/] Neither court consulted the other.

The action required of a court before assuming jurisdiction or conducting a hearing in a custody proceeding is that the court determine whether an action is pending in another state. Code Ann. § 74-507. As subsections (b) and (c) clearly reveal, the crucial determination by the court is whether at the time it assumes jurisdiction another court is presently exercising jurisdiction over the issue of custody of the child. In the present case, at the time of the hearing on May 10, 1979, on the mother's motion to dismiss for lack of jurisdiction and upon

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1/ The duty of a party to inform the court of any custody proceeding in any other state continues during the entire proceeding. Code Ann. § 74-510(c).

the case in chief, the Georgia court had before it the final order of the Florida court entered April 18, 1979, concluding the Florida action. No additional inquiry was necessary, it being apparent that the Florida action had been concluded before the Georgia court exercised jurisdiction, although after the Georgia petition was filed. An investigation at that point would have been futile, and it is clear that the law does not require a useless act. Had the Georgia proceeding been dismissed, there could have been no resolution of the custody dispute by any court unless a new lawsuit were brought. This result would be contrary to principles of judicial economy and orderly administration of justice and would have done nothing to advance the purpose of § 74-507, which is the prevention of jurisdictional conflicts between the states. Consequently, we find that the pendency of the Florida action at the time the Georgia action was filed did not preempt the jurisdiction of the Georgia court.

(3) The mother also assigns error in the court's finding that there had been a material change in circumstances affecting the welfare of the child so that custody should be changed to the father. In making the determination whether there has been a material change in circumstances affecting the child, the trial court is vested with broad discretion which will not be disturbed

on appeal unless abused. Wrede v. Beuke, 221 Ga. 778 (147 SE2d 324) (1966); Mallette v. Mallette, 220 Ga. 401 (139 SE2d 322) (1964). We find that the trial court did not abuse its discretion in finding it in the best interest of the child that custody be awarded to the father.

The remaining enumerations of error are without merit.

Judgment affirmed. All the Justices concur except Justices Gordon, Nell and Marshall, who dissent.

HILL, Justice, dissenting.

The mother left her six year old son in the care of his 13 year old step-sister for a weekend. The mother's cousins, who lived next door, were looking after the children. While such conduct may not be proper child care, it does not constitute abandonment or an emergency. The father brought the child back to Georgia on February 18, 1979, and did not file this suit until March 23, over a month later.

The majority find (division 1, supra) that the Georgia court had jurisdiction under Code Ann. § 74-504(a)(3). That section provides that "A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." This is § 3(a)(3) of the Uniform Child Custody Jurisdiction Act.

To avoid "child snatching" of allegedly abandoned children, or children found in a situation alleged to be an emergency,

I would hold that § 3(a)(3) of the UCCJA, Code Ann. § 74-504(a)(3), supra, gives jurisdiction to a court of that state where the child is physically present when the alleged abandonment or emergency is discovered by his or her parent or person claiming the right to custody. That would be the Florida court in this case. In my view the majority has condoned child snatching contrary to the landmark decision in Mathews v. Mathews, 238 Ga. 201 (232 SE2d 76) (1977).

I respectfully dissent to this return to the old ways. I am authorized to state that Jordan and Marshall, JJ., join in this dissent.

No. 79-6853

In the Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB, PETITIONER,

v.

JAMES THOMAS WEBB, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 27, 1980.
CERTIORARI GRANTED OCTOBER 6, 1980.

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Divorce Decree, Superior Court, Berrien County, Georgia	2
Petition to Establish, Enforce, and Modify Foreign Judgment, Circuit Court, Alachua County, Florida	6
Restraining Order, Circuit Court, Alachua County, Florida	17
Complaint, Superior Court of Berrien County, Georgia	20
Final Judgment Establishing and Enforcing Out of State Judgment, Circuit Court, Alachua County, Florida	25
Motion to Dismiss and Answer, Superior Court, Berrien County, Georgia	27
Amendment of Motion to Dismiss and Answer, Superior Court, Berrien County, Georgia	33
Order of Superior Court of Berrien County, Georgia	38
Notice of Appeal to Supreme Court of Georgia	42
Enumeration of Errors in Supreme Court of Georgia	44
Opinion of Supreme Court of Georgia	48
Motion for Rehearing in Supreme Court of Georgia	52
Order of Supreme Court of Georgia Denying Motion for Rehearing, and Dissenting Opinion in Appeal	53
Order of the Supreme Court of the United States Granting Motion for Leave to Proceed in forma pauperis and Granting Petition for Writ of Certiorari	54

RELEVANT DOCKET ENTRIES

1977

September 22. Hearing held and Final Divorce Decree entered, Superior Court of Berrien County, Georgia.

1979

March 8. Petition to Establish, Enforce, and Modify Foreign Judgment filed in Circuit Court, Alachua County, Florida.

March 8. Restraining Order entered, Circuit Court, Alachua County, Florida.

March 23. Complaint filed, Superior Court of Berrien County, Georgia.

April 19. Hearing held and Final Judgment Establishing and Enforcing Out of State Judgment entered, Circuit County, Alachua County, Florida.

April 24. Motion to Dismiss and Answer filed, Superior Court of Berrien County, Georgia.

April 26. Amendment to Motion to Dismiss and Answer filed, Superior Court of Berrien County, Georgia.

May 10. Hearing held in Superior Court of Berrien County, Georgia.

June 21. Order entered by Superior Court of Berrien County, Georgia.

July 19. Notice of Appeal to Supreme Court of Georgia filed.

1980

April 8. Opinion entered by Supreme Court of Georgia.

April 14. Motion for Rehearing in Supreme Court of Georgia filed.

April 22. Motion for Rehearing denied by Supreme Court of Georgia, Dissenting Opinion on Appeal filed.

IN THE Superior Court, Berrien County, Georgia

No. 77-D-69

Feb adjoined Term, 1977

JAMES THOMAS WEBB

vs

LEAH LYNN PARRISH WEBB

TOTAL DIVORCE
JUDGMENT AND DECREE—NO JURY

Upon consideration of the above entitled case, no defense having been filed and no jury trial demanded by either party, on the evidence submitted it is the judgment of the Court that a total divorce be granted between the parties: that is to say, a divorce a vinculo matrimonii, upon legal principals.

IT IS THEREFORE ORDERED AND DECREED by the Court that the marriage contract heretofore entered into between the parties to said case is hereby set aside and dissolved as fully and effectually as if no such contract had ever been made and entered into.

ORDERED FURTHER, that the Plaintiff and the Defendant, formerly husband and wife, in the future be held and considered as a separate and distinct persons altogether unconnected by any nuptial union or civil contract whatsoever.

The rights and disabilities of the parties are fixed as follows: The Plaintiff shall be at liberty to marry again and the Defendant shall *also* be at liberty to marry again.

ORDERED FURTHER, that the wife's maiden name not be restored to her,

The Court awards custody of the children of the parties as follows:

> *The minor child, Shane Scott Webb, is awarded to the defendant in* accordance with agreement marked Exhibit A and made a part of this *final decree.*

The Court fixes alimony and support for the wife and children as follows:

> As spelled *out in the settlement agreement between plaintiff and* defendant above referred to as Exhibit A and made a part hereof by *reference.*

ORDERED FURTHER, that the terms of the settlement agreement between plaintiff and defendant above referred to as Exhibit A, and the terms *of this Final Decree are hereby made mandatory on plaintiff and* defendant and in in the event of failure of either plaintiff or defendant to comply with the terms of said agreement and this said decree shall be punishable by contempt of court.

ORDERED FURTHER, that the Defendant pay the costs of these proceedings,

Entered in Open Court, this the 22 day of Sept, 1977.

W.D. KNIGHT
(W.D. Knight)
Judge Superior Courts, *Alapaha Circuit*

STATE OF GEORGIA, Berrien COUNTY. Office of Clerk Superior Court.

This is to certify that the above is a true and correct copy of the Judgment and Decree of total divorce in the above stated case.

WITNESS MY OFFICIAL SIGNATURE and the SEAL OF THE COURT.

This 1st day of March, 1979

Bonnie M Moore, dpty.

Clerk Superior Court, Berrien County, Ga.

Filed in office, this 22nd day of September, 1977 Bonnie M. Moore, dpty.

ITEM 1.

ALIMONY/PROPERTY SETTLEMENT

(a) The Husband shall pay attorney's fees to Perry & Franklin, P.C. in the said divorce case, plus the court costs in said case.

(b) The Husband shall have as his part of the division of property, the following listed property: The 1973 Montego Mercury and his personal effects. The Wife shall have as her part of the division of property, all the remaining property owned by the parties hereto and her personal effects. Husband agrees to pay any and all indebtedness of Husband or Wife or Husband and Wife jointly as of June 20, 1977.

(c) Upon the above payments and surrender of property being made to the Wife, she shall have no further claim against the Husband of any kind or character, for alimony, property settlement or otherwise.

ITEM 2.

CUSTODY AND VISITATION PRIVILEGES FOR MINOR CHILDREN

The custody of the minor child of the parties, namely: Shane Scott Webb, is hereby given to Wife and reasonable visitation privileges are hereby granted to husband.

ITEM 3.

CHILD SUPPORT

Husband hereby agrees to pay $20.00 per week child support until said child reaches 18, marries or becomes otherwise welf-supporting. Said payments are to be made directly to Wife on or before 10:00 a.m. of each Saturday. Husband further hereby agrees to pay any and all reasonable medical, hospital, drug, doctor and dental bills incurred by said minor child until he shall reach the age of 18, marries or becomes self-supporting, beginning from date hereof.

ITEM 4.

ACKNOWLEDGEMENT OF SERVICE AND CONSENT TO TRIAL

The Wife hereby acknowledges service of the complaint in said case and hereby waives service of any and all papers incident to said complaint, and, based upon the foregoing agreement, the Husband and Wife agree that the Superior Court of Berrien County, Georgia, may try said case without a jury anytime after same has been filed for 30 days, in any county in the Alapaha Judicial Circuit. The parties hereto request the court to make this agreement the judgment of the court with respect to custody, visitation privileges, alimony, child support, attorney's fees, court costs, and property rights of the parties.

EXECUTED IN DUPLICATE, this 19 day of July, 1977.

Witness:	Wife:
/s/ _____	_____ (SEAL)
LARRY HARGROVE	LEAH LYNN PARRISH WEBB
Witness:	Husband:
/s/_____	_____ (SEAL)
LARRY HARGROVE	JAMES THOMAS WEBB

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIA

Case No. 79-569-CA
Division H

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

PETITION TO ESTABLISH, ENFORCE, AND MODIFY FOREIGN JUDGMENT

COMES NOW the Petitioner, LEAH LYNN PARRISH WEBB, by and through her undersigned attorney, petitions this Court to establish, enforce, and modify a foreign judgment of divorce and custody, and says:

1. This action is brought pursuant to the authority of Sections 61.133 and 61.1332, Florida Statues (1977).

2. The parties hereto were divorced by Final Judgment of Divorce dated September 22, 1977 and entered in the Superior Court, Berrien County, Georgia, on September 22, 1977. A certified copy of said judgment of divorce is attached hereto and incorporated herein by reference.

3. This Court has jurisdiction over this cause by virtue of the authority of Section 61.1308, Florida Statutes (1977).

4. Said Final Judgment of Divorce awards permanent custody of the minor child of the parties, to-wit: SHANE S. WEBB, age 6, to the Petitioner, subject to reasonable visitation rights in the Respondent.

5. The Respondent, JAMES THOMAS WEBB, has, without legal authority or agreement, abducted said minor

child and removed him to the State of Georgia in violation of said Final Judgment of Divorce. Petitioner verily believes that unless this Court exercises jurisdiction and restrains the Respondent from such activity, that said activity will be repeated.

6. The Respondent has repeatedly and continuously refused to pay the medical and dental expenses for said minor child as ordered by the Final Judgment of Divorce.

7. It is in the best interests of the child that this Court establish the Foreign Judgment, modify the Respondent's visitation rights to restrict visitation to Alachua County, Florida, and enforce the terms of the Judgment as far as said terms refer to medical and dental payments in behalf of the minor child.

WHEREFORE, the Petitioner respectfully requests this Court will enter it's Order establishing the Foreign Judgment of Divorce enforcing the provisions of said divorce regarding medical and dental payments, and modify the visitation rights of the Respondent to prevent further removal of the child from this jurisdiction.

THREE RIVERS LEGAL SERVICES, INC.
By: /s/ _____
JEFFREY H. BARKER
Attorney for Wife
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

/s/ _____
LEAH LYNN PARRISH WEBB
Wife/Petitioner

STATE OF FLORIDA
COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, this day personally appeared LEAH LYNN PARRISH WEBB, the Wife/Petitioner, who, after first being duly sworn, deposes and says that she has read the foregoing Petition and that each and all of the facts and matters contained

therein are true and correct to the best of her knowledge and belief.

/s/_____
LEAH LYNN PARRISH WEBB

SWORN TO and subscribed before me this 2nd day of March, 1979, A.D.

/s/_____
THOMAS R. WILLIAMS
Notary Public
State of Florida at Large

My Commission expires: Sept. 29, 1981.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No.
Division

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

MOTION FOR EMERGENCY RESTRAINING ORDER WITHOUT NOTICE

COMES NOW, the Petitioner, LEAH LYNN PARRISH WEBB, by and through her undersigned attorney, and moves this Court for a Restraining Order without Notice, and says:

1. There is now pending before this Court an action to establish a foreign decree, to enforce said decree and to modify said decree between the parties.

2. The Respondent, JAMES THOMAS WEBB, has without legal authority, abducted the minor child of the parties and removed him from the State of Florida.

3. The Petitioner verily believes that the Respondent will continue to violate the terms of the foreign decree unless he is enjoined by the Courts of this State from said activity.

4. Petitioner seeks the Restraining Order against Respondent without notice on the basis that the Respondent's abduction of the child constitutes an emergency situation, and were notice to be provided to the Respondent as to a hearing in this case, the child would be

subjected to the continuing possibility of such activity by the Respondent.

WHEREFORE, the Petitioner respectfully requests this Court will enter it's Restraining Order, enjoing the Respondent from removing the minor child of the parties beyond the jurisdiction of this State.

/s/ _____

JEFFREY H. BARKER
Attorney for Wife
Three Rivers Legal Services, Inc.
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No.
Division

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ALACHUA

THIS DAY personally appeared before me the undersigned authority, LEAH LYNN PARRISH WEBB, the Wife in the above-styled action, who, after first being duly sworn, makes this her affidavit and states that the allegations contained herein are true and correct:

1. There has been (1) child born of the union of the parties, to-wit: SHANE S. WEBB.

2. The above-named child has lived in the following locations for the past five years:

November, 1973 to September, 1976	Jacksonville, Florida
September, 1976 to July, 1977	Nashville, Georgia
July, 1977 to November, 1977	Lakeland, Georgia
November, 1977 to January, 1979	Micanopy, Florida
January, 1979 to Present	Gainesville, Florida.

3. That the present address LEAH LYNN PARRISH WEBB, the Wife/Petitioner, is 3901 S. E. 14th Terrace, Gainesville, Florida.

4. That the present address of JAMES THOMAS WEBB, the Husband/Respondent, is 2007 Lynn Avenue, Nashville, Georgia, 32635.

5. The Affiant further states:

a. The Wife has participated in earlier litigation regarding the custody of this child in the Superior Court of Berrien County, Georgia, from July to September, 1977.

b. That there may be a pending litigation in the State of Georgia, but the Wife has not been served with any process of any other Court.

c. That the Wife knows of no other person who is not a party to these proceedings who claims to have either custody or visitation rights with respect to the above-named minor child.

Further the Affiant saith not.

/s/ _____
LEAH LYNN PARRISH WEBB

SWORN TO and subscribed before me this 2nd day of March, 1979, A.D.

/s/ _____
THOMAS R. WILLIAMS
Notary Public
State of Florida at Large
My Commission expires: Sept. 29, 1981.

(jurat omitted in printing)
(affidavit of insolvency omitted in printing)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

CIVIL ACTION
Case No. 79-569-CA
Division H

IN RE: The Marriage of:
JAMES THOMAS WEBB, HUSBAND/RESPONDENT,
and
LEAH LYNN PARRISH WEBB, WIFE/PETITIONER.

SUMMONS

THE STATE OF GEORGIA:
TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:
GREETINGS:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the petition in the above styled cause upon the respondent:

JAMES THOMAS WEBB
2007 Lynn Avenue
Nashville, Georgia 31635
-or-
Nashville Police Department
Nashville, Georgia

The respondent is hereby required to serve written defenses to said petition on petitioner's attorney, whose name and address is:

JEFFREY H. BARKER
Three Rivers Legal Services, Inc.
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

within 20 days after service of this summons upon that respondent, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on petitioner's attorney or immediately thereafter. If a respondent fails to do so, a default will be entered against that respondent for the relief demanded in the petition.

WITNESS my hand and the seal of said Court on March 7, 1979.

/s/ _____
A. CURTIS POWERS
Clerk Circuit Court

By: /s/ _____
JULIE E. RILEY
As Deputy Clerk

(Court Seal)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division "H"

IN RE: The Marriage of:
JAMES THOMAS WEBB, HUSBAND/RESPONDENT,
and
LEAH LYNN PARRISH WEBB, WIFE/PETITIONER.

AFFIDAVIT OF SERVICE OF PROCESS

STATE OF GEORGIA
COUNTY OF BERRIEN

On this day, before me, an officer duly authorized by law to administer oaths and take acknowledgement, personally appeared Willie Bell, Deputy Sheriff who after first being duly sworn, deposes and says:

1. That on the 13 day of March, 1979, he received a Summons, Petition, Affidavit, Motion for and Restraining Order to be served on JAMES THOMAS WEBB, the above named Respondent in the above-designated action.

2. That at 5:00 P.M. on the 13 day of March 1979, he did serve on the above-named JAMES THOMAS WEBB the above-specified documents by delivering a true and correct copy of the same to him at Residence, Lynn Ave, Nashville, Ga.

FURTHER THE AFFIANT SAITH NOT.

/s/ _____
WILLIE BELL

SWORN TO and subscribed before me this 14 day of March 1979, A.D.

/s/ _____
DORIS H. GASKENS
Notary Public

(Seal)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division: "H"

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

RESTRAINING ORDER

THIS CAUSE having come to be heard upon Motion for Restraining Order Without Notice, the Court having received the testimony of the Petitioner, and the Court being fully advised as to the premises, the Court finds as follows:

1. The State of Florida has jurisdiction over the custody of the minor child of the parties.

2. The Respondent, JAMES THOMAS WEBB, has removed the child from the State of Florida.

3. The State of Florida and the State of Georgia are both members of that group of states whose child custody actions are governed by the Uniform Child Custody Jurisdiction Act.

It is thereupon ORDERED AND ADJUDGED that:

1. The Respondent, JAMES THOMAS WEBB, is enjoined and restrained from violating the custody order as contained in that certain Divorce Judgment entitled "JAMES THOMAS WEBB vs. LEAH LYNN PARRISH WEBB, Superior Court, Berrien County, Georgia, Case Number 77-D-69, dated September 22, 1977."

2. The Respondent, JAMES THOMAS WEBB, shall return the minor child, to wit: SHANE J. WEBB, to the custody of the Petitioner, LEAH LYNN PARRISH WEBB, immediately.

3. The Respondent, JAMES THOMAS WEBB, is restrained from removing the minor child from Alachua County, Florida, until further order of this Court.

Further, it is requested that the Courts of the State of Georgia cooperate in the enforcement of this Order and join with the Courts of this state in retaining jurisdiction over this controversy in the State of Florida, pursuant to the Uniform Child Custody Jurisdiction Act.

BOND IS WAIVED

DONE and ORDERED in Chambers at Gainesville, Alachua County, Florida this 8 day of MARCH, 1979, A.D.

/s/ _____
RAGREEN, JR.
Circuit Judge

Copies furnished to:

Jeffrey H. Barker
Attorney for Petitioner

STATE OF FLORIDA
COUNTY OF ALACHUA

IN RE: Webb & Webb

I, A. Curtis Powers, Clerk of the Circuit Court, Eighth Judicial Circuit of Florida, in and for Alachua County, do hereby certify that the above and foregoing are true and correct copies of the Original as the same appears of record in Civil Action 79-569-CA, one of the Public Records my Office. WITNESS my hand and the Official Seal of said Circuit Court at Gainesville, Florida, this 2, day of April, 1979.

OFFICIAL SEAL

A. CURTIS POWERS
Clerk Circuit Court

By JIEFIE E. RIFEY
Deputy Clerk

IN THE SUPERIOR COURT OF BERRIEN COUNTY GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT

COMPLAINT

Plaintiff files this Complaint and shows the following:

1.

Defendant is a resident of Florida, and is subject to the jurisdiction of this Court as this Court is the Court of original jurisdiction which handed down the Order of Divorce and child custody award which this petition seeks to change and modify. The residence of the subject child, Shane Scott Webb, is Berrien County, Georgia.

2.

By virtue of final decree entered September 22, 1977 in Case No. 77-D-69, Superior Court of Berrien County, Georgia, Defendant was awarded the legal custody of the following minor child: Shane Scott Webb—Age: 6 years. Attached hereto is a copy of decree.

3.

Defendant is the mother and Plaintiff is the father of said child.

4.

Subsequent to said decree, the mother has moved about the States of Georgia and Florida since the divorce of she

and Plaintiff and she has not provided a stable home environment for said child. There has been periods of time since the said divorce that Plaintiff did not know the whereabouts of his said minor child because of the Defendant constantly moving about.

On or about the 17th day of February, 1979, the Defendant left said six year old child in Gainesville, Florida with her twelve year old daughter by a previous marriage. Said two children were left by the Defendant in a house in Gainesville, Florida for a period of three days while Defendant went to Miami, Florida. The authorities in the State of Florida contacted the Plaintiff during said three-day period and requested Plaintiff to pick up his minor child as he was not being properly cared for and that he was being neglected and left in an unfit situation.

5.

Said change of circumstances materially affects the welfare of said child.

6.

As a result of such change of circumstances, Defendant has become an unfit parent.

As a result of such change of circumstances, the Plaintiff should be granted the custody of said child and the above stated decree should be modified accordingly.

PERRY & FRANKLIN, P. C.

/s/ _____
W. S. PERRY
Attorney for Plaintiff

P.O. Box 647
Nashville, Georgia 31639
(912) 686-5591

(jurat omitted in printing)
(Exhibit omitted—printed supra)

IN THE SUPERIOR COURT OF BERRIEN COUNTY GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT

RULE NI SI

The foregoing Petition for change of custody having been read and considered, let the same be filed.

Let the Defendant show cause before this Court at the Courthouse in Nashville, Georgia on the 10th day of May, 1979 at 1:30 o'clock p.m. why the custody of the subject child should not be granted to Plaintiff.

/s/ _____
MILDRED MOORE
Clerk, Berrien County Superior Court

STATE OF GEORGIA SUPERIOR COURT
BERRIEN COUNTY

Civil Action, File No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

SUMMONS

To the above-named Defendant: Leah Lynn Parrish Webb.

You are hereby summoned and required to file with the Clerk of said Court and serve upon W.S. Perry of Perry & Franklin, P.C.

Plaintiff's attorneys, whose address is
P.O. Box 647
Nashville, Georgia 31639

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons, upon you, exclsuive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This the 23 day of March, 1979.

/s/ _____
BONNIE M. MOORE, dpty
Clerk of Court.

To the Defendant upon whom this Summons is served:

This copy of Summons was served upon you on the ____ day of _____, 19___ Sheriff of_____ County.

I hereby certify that I served a copy of this summons together with a copy of COMPLAINT & copy of RULE NI

SI on the defendant herein, LEAH LYNN PARRISH WEBB. On the 29 day of March, 1979, at 6:20 p.m.

L.J. HINDERY, SHERIFF
Alachua County, Florida
By /s/_____
L. STARLING
Deputy Sheriff

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division "H"

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

FINAL JUDGMENT ESTABLISHING AND ENFORCING OUT-OF-STATE DECREE

THIS CAUSE having come to be heard before the Court upon Petition to Establish, Enforce and Modify Foreign Judgment, the Husband having been served with regular process of the Court, and a Default having been entered against him, the Court having entertained the testimony of the Wife, and the Court being otherwise fully advised as to the premises, the Court finds as follows:

1. This Court has jurisdiction over the parties and subject matters of this action.

2. The Wife and minor child are permanent, bona fide residents of the State of Florida, and as such are entitled to the benefits afforded them under current Florida Law.

3. It is in the best interests of the child that the visitation rights afforded to the Husband be modified in order to provide for specific, predictable scheduling.

IT IS THEREUPON Ordered and Adjudged as follows:

1. That certain Final Decree of Divorce entered by the Superior Court, Berrien County, Georgia, Case Number 77-D-69, dated September 22, 1977, and filed with this

Court, is hereby established as if it were a judgment of this Court.

2. The minor child of the parties, to-wit: SHANE SCOTT WEBB, is a resident of the State of Florida, not withstanding the fact that he is currently physically in the State of Georgia.

3. The Husband's visitation rights as to the minor child are modified to the extent that the Husband shall now have the right to visit with the child and have the child visit with him for a period of one weekend per month, weekend being defined as that time from Friday evening at 6:00 p.m. until Sunday evening at 8:00 p.m. with the exception of the legally established three (3) day federal holiday weekends, at which time said weekend shall be extended to include the additionally twenty-four (24) hour period for said holiday. In addition, the Husband shall have the right to have the child visit with him for a period of six (6) consecutive weeks during the normal summer school vacation periods, and for a period of one (1) week during the normal two (2) week Christmas holiday vacation.

4. In all other respects, the judgment of the State of Georgia as it incorporates an earlier agreement by the parties shall remain in full force and effect in this State.

5. This Court will retain jurisdiction over the parties of this action for enforcement of this decree.

DONE and ORDERED in Chambers in Gainesville, Alachua County, Florida this 18th day of April, 1979, A. D.

/s/ _____
OSSE R. FAGAN
Circuit Judge

Copies furnished to:
Jeffrey H. Barker
James Thomas Webb

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

Civil Action No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

MOTION TO DISMISS AND ANSWER

MOTION TO DISMISS

Comes now LEAH LYNN PARRISH WEBB, Defendant in the above styled action, and moves this Court to dismiss this action on the following grounds:

(a) The Court lacks jurisdiction over the subject matter of this action in that it represents an attempt to modify a previous award of this Court without complying with all necessary requirements for the prosecution of a new and independent action.

(b) The Court lacks jurisdiction over the person of Defendant as she is a resident of the State of Florida. As the legal custodian of the minor child of the parties herein, the Defendant's residence is the residence of the minor child as well and the Court lacks jurisdiction over the person of the child as well as Defendant.

(c) Venue is improper in this action as this action must be brought in the residence of Defendant, who is a Florida resident.

(d) There has been insufficient process and/or insufficient service of process in that Defendant has been served at her residence in another state, and such service is neither allowed by statute, court order, or the Constitution of the State of Georgia.

(e) Plaintiff's complaint fails to state a claim upon which relief should be granted.

(f) On or about March 13, 1979, Defendant herein perfected service upon Plaintiff in the case of In Re: The Former Marriage of: JAMES THOMAS WEBB, Husband and LEAH LYNN PARRISH WEBB, wife, Civil Action No. 79-569-CA, which action had been properly filed in Alachua County, Florida, the residence of Defendant and the minor child. Subsequent to said complaint being served, Plaintiff herein filed this action. This Court should therefore dismiss this action on the grounds that Defendant herein had already begun an action which was still pending at the time this action was filed, and no stay of such action has ever been granted. A copy of said action is attached as Exhibit "A" and hereby incorporated by reference for all purposes.

(g) Proceeding with this action will result in great inconvenience to the Defendant as defending this action will require substantial travel by Defendant, and the expenditure of significant amounts of money beyond the resources of Defendant.

(h) It is in the interest of the minor child herein that the courts of the State of Florida retain jurisdiction of this matter consistent with the action filed in Florida as mentioned above in Paragraph (f). The true home of the child is Florida, and the child has been brought to Georgia only because of the illegal seizure of the child by the Plaintiff herein. All evidence relating to the recent care, protection, training, and personal relationships of this child are in the State of Florida.

(i) The Petitioner herein has wrongfully taken the child from the State of Florida contrary to the final decree of divorce between these parties entered on September 22, 1977, and thus brought the child to the State of Georgia; the Court should therefore decline jurisdiction, if such jurisdiction exists, over this matter.

(j) The Plaintiff herein has not complied with the mandatory requirements of Ga. Code § 74-510 in the prosecution of this action.

(k) This action is clearly contrary to the statutory mandates of Ga. Code § 24-304b(a), which requires that such actions be prosecuted only in the county of residence of the legal custodian of the child, who is the Defendant herein.

(l) Plaintiff herein, acting as a physical custodian only, should not be allowed to maintain this action for change of custody, while he is illegally withholding custody of the minor child in violation of the decree of divorce between these parties, entered in September of 1977.

ANSWER

1.

Defendant admits that she is resident of Florida, but denies that this Court has jurisdiction over her in this matter. In further response, Defendant states that this Court cannot exercise any jurisdiction over Defendant by virtue of the fact that this Court entered the original divorce decree between these parties. Defendant further denies that Shane Scott Webb, minor child, is a resident of Berrien County, and states that he is presently in Berrien County only because has has been brought there by Plaintiff in violation of court ordered custody.

2.

Defendant admits the allegations of Paragraphs 2 and 3 of Plaintiff's complaint, but denies all of Paragraph 4.

3.

In response to Paragraph 5 of Plaintiff's complaint, Defendant denies that there has been any material change in circumstances since the final decree of divorce between the parties to this action.

4.

Defendant denies the allegations contained in Paragraph 6 of Plaintiff's complaint.

5.

Defendant denies each and every other allegation in Plaintiff's complaint not hereinbefore admitted or specifically denied.

FIRST DEFENSE

6.

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

7.

The Court lacks subject matter jurisdiction over this action.

THIRD DEFENSE

8.

The Court lacks jurisdiction over the person of Defendant in this action.

FOURTH DEFENSE

9.

Venue is improper in Berrien County, Georgia, as Defendant is a resident of the State of Florida.

FIFTH DEFENSE

10.

There has been insufficient service of process upon Defendant in that Defendant was a non-resident of this State when served with a copy of the complaint in this action.

SIXTH DEFENSE

11.

This action is barred because a similar action concerning custody of the minor child herein had already been filed by Defendant in the State of Florida in accordance with Florida law and service in such action had been perfected upon Plaintiff herein before the filing of this action.

SEVENTH DEFENSE

12.

Prosecution of this action in the State of Georgia will be extremely inconvenient to Defendant as a forum for litigating the question of custody of the parties' minor child.

EIGHTH DEFENSE

13.

Prosecution of this action in this State is contrary to the spirit and requirements of the Uniform Child Custody Jurisdiction Act.

NINTH DEFENSE

14.

Prosecution of this action in this State is contrary to the spirit and requirements of the Georgia Child Custody Jurisdiction Act.

TENTH DEFENSE

15.

This action is contrary to the stated public policy of this State, which prohibits parties, such as Plaintiff, who have unlawfully seized minor children contrary to court order, from maintaining actions such as these or prosecuting such actions in a forum which is not the residence of the Defendant.

WHEREFORE, Defendant prays:

(a) That this action be dismissed;

(b) That all costs of this action be assessed against the Plaintiff;

(c) For such other and further relief as this Court deems just and proper.

/s/ _____

ROY M. SOBELSON
Attorney for Defendant

1421 Union Street
Post Office Box 10
Brunswick, Gerogia 31520
912/264-7301

(jurat omitted in printing)
(Exhibit "A" omitted—printed *supra*)
(certificate of service omitted in printing

IN THE SUPERIOR COURT OF
BERRIEN COUNTY STATE OF GEORGIA

Civil Action No. 79-C-43

AMENDMENT

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

AMENDMENT PRIOR TO ENTRY OF PRE-TRIAL ORDER

Comes now LEAH LYNN PARRISH WEBB, prior to entry of any pre-trail order in this action, and amends her Motion to Dismiss and Answer as follows:

(A) By adding to her Motion to Dismiss, as Paragraphs (m) through (u), the following:

(m) On or about March 8, 1979, Defendant herein filed an action against Plaintiff herein as detailed in Paragraph (f) above.

(n) Said action was filed in the State of Florida pursuant to Sections 61.133, 61.1308, and 61.1332, Florida Statutes (1977) and other relevant sections of the Uniform Child Custody Jurisdiction Act, as adopted by the State of Florida. (61.1302 et seq.) A copy of said statute is attached hereto as Exhibit "B" and hereby incorporated by reference.

(o) Service in said action was perfected upon Plaintiff herein, JAMES THOMAS WEBB, under authority of 48.194, 48.193 and 61.1302 et seq. A copy of said statute is attached hereto as Exhibit "C" and hereby incorporated by reference.

(p) In said action, Defendant herein sought to have the Circuit Court of Alachua County, Florida, Establish, Enforce and Modify the Final Judgment of Divorce between the parties herein, which was granted on September 22, 1977 in Berrien County, Georgia.

(q) Said action also sought to obtain a Restraining Order restraining Plaintiff herein from removing the parties' minor child from the State of Florida.

(r) On or about March 8, 1979, JAMES THOMAS WEBB, Plaintiff herein was restrained from violating the custody order as contained in the Final Judgment and Decree of Divorce between these two parties.

(s) Despite said Court order, Plaintiff herein continues to hold the parties' minor child contrary to said order and the mandates of the Final Decree of Divorce.

(t) On or about April 18, 1979, the Circuit Court of Alachua County, Florida, entered a Final Judgment Establishing and Enforcing Out-of-State Decree. A copy of said judgment is attached hereto as Exhibit "D" and hereby incorporated by reference.

(u) Plaintiff herein, by holding the parties' minor child at present, continues to violate the mandates of that order, as well as the Final Judgment and Decree of Divorce of September 22, 1977.

(B) By adding the following paragraphs 16 through 27, following Paragraph 15 of her original answer:

ELEVENTH DEFENSE

16.

Plaintiff herein continues to act contrary to the order of the Superior Court of Berrien County, entered September 22, 1977, and also is acting in violation of the April 18, 1979, order of the Circuit Court of Alachua County, Florida (Case No. 79-569-CA), which order should be accorded full faith and credit by this Court, as it was made pursuant to relevant Florida law, as stated above.

FIRST COUNTERCLAIM

17.

Defendant repeats and realleges Paragraphs (a) through (u) of her Motion to Dismiss and 1 through 16 of her Answer as if fully realleged herein.

18.

Plaintiff in this action is a resident of Berrien County, Georgia and is subject to the jurisdiction of this Court.

19.

By virtue of the final divorce decree between the parties herein, JAMES THOMAS WEBB, was ordered to pay the sum of $20.00 per week child support for the support of Shane Scott Webb, custody of whom was granted to Defendant herein.

20.

By virtue of said divorce decree, JAMES THOMAS WEBB was also ordered to pay any and all reasonable medical, hospital, drug, doctor and dental bills for said child.

21.

Since on or about December 1, 1978, Plaintiff herein has failed and willfully refused to pay said child support or any of the minor child's health expenses.

22.

Plaintiff herein is in wilful contempt of this Court's order of September 22, 1977, and should be attached for contempt until such payments and expenses are paid by Plaintiff.

SECOND COUNTERCLAIM

23.

Defendant repeats and realleges Paragraphs (a) through

(u) of her Motion to Dismiss and Paragraphs 1 through 22 of her Answer as if fully realleged herein.

24.

Defendant herein is the legal custodian of Shane Scott Webb, by virtue of a final decree of divorce entered by the Superior Court of Berrien County, on September 22, 1977.

25.

The Plaintiff herein is illegally detaining and withholding custody of the minor child from Defendant in Berrien County, Georgia, and has illegally held said child since on or about February 17, 1979.

26.

Plaintiff herein has no cause or justification for withholding said minor child from the custody and control of Defendant herein.

27.

Defendant herein demands that a writ of habeas corpus issue requiring Plaintiff herein to appear and produce said child before this Court and show cause why custody should not be restored to Defendant.

(c) By adding to her Prayer for Relief, the following:

(d) That Plaintiff herein be adjudged in contempt of Court and ordered to pay all sums of child support and medical bills presently owing or otherwise be imprisoned in the common jail for said offense;

(e) That a writ of habeas corpus issue requiring Plaintiff herein to appear and produce the minor child before this Court and otherwise show cause why custody should not be restored to Defendant.

Respectfully submitted,

/s/ _____

ROY M. SOBELSON

Attorney for Defendant

1421 Union Street
Post Office Box 10
Brunswick, Georgia 31520
912/264-7301

(jurat omitted in printing)
(Exhibits "B" and "C" omitted—
Florida statutes printed in Appendix
to Petitioner's Brief on the Merits)
(Exhibit "D" omitted—printed *supra*)
(certificate of service omitted in printing)

IN THE SUPERIOR COURT OF
BERRIEN COUNTY STATE OF GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

ORDER

STATEMENT OF THE CASE

This case came on for a hearing before this Court with both parties being represented by counsel. This is a complaint filed by the plaintiff to change the custody concerning one minor child, Shane Scott Webb. By virtue of a final decree entered September 22, 1977 in Case No. 77-D-69 in the Superior Court of Berrien County, Georgia, the defendant Leah Lynn Parrish Webb was awarded custody of the said child. This action has been brought by the father, James Thomas Webb, to have the custody changed over to him and the final decree in this matter modified accordingly. The father contended at the hearing on this matter that there had been a change of circumstances materially affecting the welfare of the child and as a result that the defendant had become an unfit parent.

The defendant contends that this court lacks jurisdiction of the subject matter in this action and over person and that the venue is improper and that the action should have been brought in Florida.

The defendant further contends that the plaintiff did not comply with the requirements of the Uniform Child Custody Jurisdiction Act, Chapter 74-5, of the Georgia Code.

The matter came on for a hearing before me with both sides being represented by counsel.

Defendant furthermore filed a counterclaim seeking a contempt citation against plaintiff for failure to pay child support and medical bills and seeking a Writ of Habeas Corpus.

FINDING OF FACTS

The court finds the following facts:

1.

That the minor child, Shane Scott Webb, is a resident of Berrien County, Georgia and was a resident of Berrien County, Georgia, at the time of the commencement of these proceedings.

2.

The Court further finds that the plaintiff and Father, James Thomas Webb, is a resident of Berrien County, Georgia, which is in the Alapaha Judicial Circuit. The court finds that at the hearing the plaintiff showed that subsequent to the decree handed down in Berrien County, Georgia, the mother has moved about the states of Georgia and Florida since the decree and has moved a total of six times since September, 1977 up until the time of this proceeding. The court further finds that on the 17th day of February, 1979, the defendant abandoned the six year old child in Gainesville, Florida and travelled to Miami for the weekend, and that the child was left alone in the defendant's home without adult supervision and that pursuant to a phone call from the authorities in Florida, the plaintiff travelled to Gainesville, Florida and picked up his child and returned to the State of Georgia with the child.

3.

The evidence further showed at the trial that the child was not being properly cared for by the defendant.

CONCLUSIONS OF LAW

The court finds the following conclusions of law:

1.

That this court has jurisdiction of this case under the Uniform Child Custody Jurisdiction Act, Chapter 74-5 of the Georgia Code. This court has jurisdiction under 74-504(a)(1) in that Georgia and Berrien County was the home state of the child at the time of the commencement of these proceedings.

2.

The court further finds that under Georgia Code Annotated 74-504(a)(2), it is in the best interest of the child that a Georgia Court assume jurisdiction because the child and at least one contestant have a significant connection with the State of Georgia and there is available in this State substantial evidence concerning the child's present or future care, protection, training and personal relationships. The Court further has jurisdiction under 74-504(a)(3), in that the child is physically present in this state and the child has been abandoned by his mother in Gainesville, Florida and it is necessary and it is and was an emergency to protect the child because he had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother.

3.

The court further finds that from the evidence introduced at the trial, it is in the best interest of this child for him to remain with his father and for the final decree entered in this matter on September 22, 1977, to be modified and the custody awarded to the plaintiff in this case. The evidence showed at the hearing that the father is remarried and that he owns a home in Nashville, Georgia, and that he is employed as a policeman with the Nashville Police Department and that the home life of the father is more conducive to raising a child than the home life of the mother and that the father is more stable.

4.

The Court further finds that the plaintiff has not willfully refused to pay child support or medical bills as provided for by the final decree. The court further finds that the plaintiff produced the child at the hearing.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED that the final decree entered in this matter on September 22, 1977, Civil Action Case No. 77-D-69, is hereby modified and the custody of Shane Scott Webb is hereby awarded to James Thomas Webb, the plaintiff in this case, because it is in the best interest of the child to award the custody to the said plaintiff.

The first and second counterclaim of the defendant in her answer is hereby denied as the evidence did not show that the father willfully refused to pay child support or any of the minor child's health expenses and this court does not hold the father in contempt. As to the second counterclaim in the defendant's answer, the Writ of Habeas Corpus is hereby denied as the court finds that the plaintiff was not illegally detaining and withholding custody of the said minor child from the defendant.

SO ORDERED THIS 21st day of JUNE, 1979.

/s/ _____

(W.D. Knight)

W.D. KNIGHT
Judge of Superior Court
Alapaha Judicial Circuit

Copies mailed by the Court
to:

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IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

Civil Action No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

v.

LEAH LYNN PARRISH WEBB, DEFENDANT.

NOTICE OF APPEAL

1.

Notice is hereby given that LEAH LYNN PARRISH WEBB, Defendant named above, hereby appeals to the Supreme Court of Georgia from the order of this Court of June 21, 1979, in which this Court ordered custody of the parties' minor child to be transferred to Plaintiff and denied Defendant's counterclaims for contempt and a writ of habeas corpus.

2.

Appeal is made to the Supreme Court of Georgia pursuant to Georgia Code § 6-701 (Acts 1965, p. 18; Acts 1968, pp. 1072, 1073; Acts 1975, pp. 757, 758). Appeal is taken to the Supreme Court of Georgia rather than to the Court of Appeals for the reason that one of several issues raised in this action is an adverse ruling on Defendant's claim for habeas corpus, a claim for which exclusive appellate jurisdiction lies in the Supreme Court. (Ga. Const. Art. VI, § II, ¶ IV, Ga. Code § 2-3104)

3.

The Clerk shall include everything from the record of this case.

4.

A reporter's transcript of the proceedings will be filed for inclusion in this record on appeal.

This 18 day of July, 1979.

/s/ _____
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912/264-7301

/s/ _____
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Leah Webb

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404/656-6021

(certificate of service omitted in printing)

IN THE SUPREME COURT
STATE OF GEORGIA

Case No. 35703

LEAH LYNN PARRISH WEBB, APPELLANT,

v.

JAMES THOMAS WEBB, APPELLEE.

ENUMERATION OF ERRORS

I.

The Court erred in failing to dismiss this action for lack of personal jurisdiction over Defendant as she was and is a bona fide resident of Florida. (R-59-62; See T-1-11, 41, 83, 92, 93, 94, 95, 113, 116; D's E-6)

II.

The Court erred in failing to find that Defendant is and was a resident of Florida, therefore not subject to the jurisdiction of the Court. (R-59-62)

III.

The Court erred in failing to dismiss this action as it contravenes the public policy of this State, the Uniform Child Custody Jurisdiction Act (Ga. Code § 74-501 *et seq.*) and the Georgia Child Custody Intrastate Jurisdiction Act (Georgia Code § 23-301b et seq.), in that the physical custodian of the parties' minor child was allowed to relitigate custody while unlawfully holding the child awarded to Defendant. (R-16, 17, 59, 60; T-1-11)

IV.

The Court erred in finding that it had jurisdiction of this case because Georgia had become the "home state" of the

child under the Uniform Child Custody Jurisdiction Act, Ga. Code §§ 74-504(a)(1) and 74-503(e). (R-60)

V.

The Court erred in finding that the minor child who is the subject of this action is and was a resident of Berrien County, Georgia. (R-60)

VI.

The Court erred in failing to find the Florida decree of April 18, 1979, a valid order in a prior pending action, give such full faith and credit, enforce it by ordering Plaintiff to comply with it in all respects, and dismiss this action. (R-59-62)

VII.

The Court erred in failing to dismiss this action for the failure of Plaintiff to comply with the mandatory filing requirements of the Uniform Child Custody Jurisdiction Act, Ga. Code § 74-510. (R-16, 59)

VIII.

The Court erred in exercising jurisdiction over this matter under Ga. Code § 74-504(a)(3) which looks to the presence of a minor child, since the presence of the minor child in this State was due solely to the wrongful actions of Plaintiff. (R-61; T-21, 25, 49, 67, 74, 75, 91)

IX.

The Court erred in finding that the Defendant had abandoned her minor child on February 17, 1979. (R-60, 61)

X.

The Court erred in finding that the minor child was not being properly cared for by Defendant, and in failing to make fact findings in support of such conclusion. (R-60, 61)

XI.

The Court erred in finding that the minor child had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother. (R-61)

XII.

The Court erred in finding that there had been a change of circumstances materially affecting the welfare of the minor child and the Defendant had become an unfit parent. (R-59, 61)

XIII.

The Court erred in finding that it is in the best interest of the minor child to remain with his father, and in modifying the earlier custody award in conformance with this finding. (R-61, 61)

XIV.

The Court erred in failing to grant Defendant's writ of habeas corpus inasmuch as the Defendant had proven the existence of a lawful custody decree, the willful disregard of that decree by Plaintiff, and a denial of rightful possession of her child. (R-62; T-21, 25, 49, 74, 75, 91, 127)

XV.

The Court erred in failing to find that Plaintiff had willfully refused to pay child support payments due Defendant and in thereby failing to hold the Plaintiff in contempt. (R-61; T-59, 60, 69, 76, 91, 118)

XVI.

The Court erred in failing to decline jurisdiction over this action because it was litigated in a forum inconvenient to Defendant. (R-16; T-98-100)

XVII.

The Court erred in failing to grant Defendant's request for expenses incurred in defending this action in accordance with Ga. Code § 74-509. (T-98-101)

XVIII.

The Court erred in failing to grant any visitation rights to Appellant in conjunction with transferring permanent custody to Appellee. (R-59-62)

STATEMENT OF JURISDICTION

Appeal is made to the Supreme Court of Georgia pursuant to Ga. Code § 2-3104 (Georgia Constitution Art. VI, Sec. II, Paragraph IV); Georgia Code § 6-701 (Acts, 1965, p. 18; 1968, pp. 1072, 1073; 1975, pp. 757, 758). Appeal is taken to the Supreme Court rather than the Court of Appeals because Appellant seeks review of an unfavorable ruling on her claim for a writ of habeas corpus. This appeal is prosecuted without regard to Ga. Code § 6-701.1, however, as the final judgment from which movant appeals was entered before July 1, 1979, the effective date of § 6-701.1. (Acts 1979, pp. 619, 622, Section 5).

/s/ _____
ROY M. SOBELSON

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912/264-7301

/s/ _____
JOHN L. CROMARTIE
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Atlanta, Georgia 30303

IN THE SUPREME COURT OF GEORGIA

35703. WEBB *v.* WEBB.

Clarke, J.

Decided: April 8, 1980

This case calls for an interpretation of certain provisions of Georgia's Uniform Child Custody Jurisdiction Act, Code Ann. § 74-501, et seq. The mother appeals an order of the Superior Court of Berrien County modifying a previous final decree of divorce by changing custody from the mother to the father. The court also denied the mother's counterclaim for contempt and her application for a writ of habeas corpus.

The evidence authorized a finding that subsequent to the entrance of a final decree of divorce entered in Berrien County September 22, 1977, giving custody of the minor child to the mother, the mother moved some six times and finally established residency near Gainesville, Florida. On February 17, 1979, the mother left the six-year old child of the parties without adult supervision at her home and flew to Miami for a weekend. Having been contacted by Florida authorities, the father went to Florida, picked up the child and returned to his home in Berrien County, Georgia.

On March 8, 1979, the wife filed an action in Alachua County, Florida, praying for an injunction for the purpose of enforcing the Georgia decree and seeking an order limiting visitation rights of the father. On March 23, 1979, before the issuance of a permanent order in the Florida action, the father filed a complaint in Berrien County, Georgia, asking that the original Georgia decree be modified to change custody of the minor child to him. The mother counterclaimed for contempt and sought a writ of habeas corpus. Subsequent to the filing of the complaint in Georgia by the father, and prior to any hearing in Georgia on the matter, the Florida court entered a final order on April 18, 1979, establishing the Georgia decree as the judgment of the Florida court and modifying the father's visitation rights.

The Superior Court of Berrien County heard evidence on the father's complaint on May 10, 1979, and on June 21, 1979, entered an order changing custody to the father and ruling that the father was not incontempt as alleged by the counterclaim. The mother's counterclaim for habeas corpus was likewise denied. The mother appeals from this order of the Superior Court of Berrien County.

(1) The mother contends that Georgia was not an appropriate or convenient forum for determination of the custody of the child because of insufficient contacts between the parties and this State. While it is true that the child was in Florida with the mother under a valid original decree of the Berrien County court giving custody to the mother, we find that the Georgia court was authorized under the evidence to find that the father retrieved the child in the face of an emergency situation created by the mother. The circumstances of the child's retrieval by the father were sufficient to afford Georgia jurisdiction under Ga. Code Ann. § 74-504(a) (3).

(2) The mother also argues that the pendency of the Florida action preempted Georgia jurisdiction. The action was pending in Florida at the time the father filed his suit, and while the father did not properly inform the Georgia court of this fact, this information was fully supplied to the Georgia court by the mother in her motion to dismiss. This fact placed a duty upon the trial court to confer with the Florida court with a view toward determining the appropriate forum. Code Ann. § 74-507. This was not done. Correspondingly, the Florida court, having notice in the mother's pleadings that an action might be pending in Georgia, was under a duty to confer with the Georgia court. There is nothing in the record before this court to indicate any effort on the part of the Florida court to fulfill this duty prior to entering its final judgment.

Among the primary purposes of the Uniform Child Custody Jurisdiction Act is to avoid overlapping adjudication and to prevent judgment races. In this case, neither state made a contribution toward that goal. The Georgia court exercised its jurisdiction with knowledge of the case in

Florida. The Florida court entered its final order with notice that an action might be pending in Georgia.[1] Neither court consulted the other.

The action required of a court before assuming jurisdiction or conducting a hearing in a custody proceeding is that the court determine whether an action is pending in another state. Code Ann. § 74-507. As subsections (b) and (c) clearly reveal, the crucial determination by the court is whether at the time it assumes jurisdiction another court is presently exercising jurisdiction over the issue of custody of the child. In the present case, at the time of the hearing on May 10, 1979, on the mother's motion to dismiss for lack of jurisdiction and upon the case in chief, the Georgia court had before it the final order of the Florida court entered April 18, 1979, concluding the Florida action. No additional inquiry was necessary, it being apparent that the Florida action had been concluded before the Georgia court exercised jurisdiction, although after the Georgia petition was filed. An investigation at that point would have been futile, and it is clear that the law does not require a useless act. Had the Georgia proceeding been dismissed, there could have been no resolution of the custody dispute by any court unless a new lawsuit were brought. This result would be contrary to principles of judicial economy and orderly administration of justice and would have done nothing to advance the purpose of § 74-507, which is the prevention of jurisdictional conflicts between the states. Consequently, we find that the pendency of the Florida action at the time the Georgia action was filed did not preempt the jurisdiction of the Georgia court.

(3) The mother also assigns error in the court's finding that there had been a material change in circumstances affecting the welfare of the child so that custody should be changed to the father. In making the determination whether there has been a material change in circumstances affecting the child, the trial court is vested with

---

[1]The duty of a party to inform the court of any custody proceeding in any other state continues during the entire proceeding. Code Ann. § 74-510(c).

broad discretion which will not be disturbed on appeal unless abused. *Wrede v. Beuke*, 221 Ga. 778 (147 SE2d 324) (1966); *Mallette v. Mallette*, 220 Ga. 401 (139 SE2d 322) (1964). We find that the trial court did not abuse its discretion in finding it in the best interest of the child that custody be awarded to the father.

The remaining enumerations of error are without merit.

Judgment affirmed. All the Justices concur except Justices Jordan, Hill and Marshall, who dissent.

IN THE SUPREME COURT
STATE OF GEORGIA

Case No. 35703

LEAH LYNN PARRISH WEBB, APPELLANT,

vs.

JAMES THOMAS WEBB, APPELLEE.

MOTION FOR REHEARING

Comes now Appellant LEAH LYNN PARRISH WEBB, and moves this Court for rehearing on its April 8, 1980, affirmance of the Berrien County Superior Court's decision. Appellant asserts that the opinion of April 8, 1980, not only ignores relevant Georgia precedent in this action, but also is based on an incorrect and dangerous interpretation of the Uniform Child Custody Jurisdiction Act. (Ga. Code § 74-501 *et seq.*) (Hereinafter UCCJA.)

(argument on motion for rehearing omitted in printing)

This 14th day of April, 1980.

/s/ _____
ROY M. SOBELSON
Attorney for Appellant

35703. WEBB v. WEBB.

HILL, Justice, dissenting.

The mother left her six year old son in the care of his 13 year old step-sister for a weekend. The mother's cousins, who lived next door, were looking after the children. While such conduct may not be proper child care, it does not constitute abandonment or an emergency. The father brought the child back to Georgia on February 18, 1979, and did not file this suit until March 23, over a month later.

The majority find (division 1, supra) that the Georgia court had jurisdiction under Code Ann. § 74-504(a) (3). That section provides that "A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." This is § 3(a) (3) of the Uniform Child Custody Jurisdiction Act.

To avoid "child snatching" of allegedly abandoned children, or children found in a situation alleged to be an emergency, I would hold that § 3(a) (3) of the UCCJA, Code Ann. § 74-504(a) (3), supra, gives jurisdiction to a court of that state where the child is physically present when the alleged abandonment or emergency is discovered by his or her parent or person claiming the right to custody. That would be the Florida court in this case. In my view the majority has condoned child snatching contrary to the landmark decision in *Mathews v. Mathews*, 238 Ga. 201 (232 SE2d 76) (1977).

I respectfully dissent to this return to the old ways. I am authorized to state that Jordan and Marshall, JJ., join in this dissent.

Supreme Court of the United States

No. 79-6853

LEAH LYNN PARRISH WEBB, PETITIONER,

v.

JAMES THOMAS WEBB

ON PETITION FOR WRIT OF CERTIORARI TO the Supreme Court of the State of Georgia.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 6, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ORIGINAL COPY

No. 79-6853

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S REQUEST FOR WRIT OF CERTIORARI

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Attorneys for Respondent

INDEX

Reasons for Not Granting the Writ...

1. The decision below is in line with Established principles that the paramount interest in child custody cases is the best interest of the child which may require the modification of a prior custody decree..... 1

2. Respondent's conduct was not contrary to the purposes set forth in the Uniform Child Custody Jurisdiction Act..... 4

CITATIONS

Cases:

Belden v. Strickland, 218 Ga. 105 (1962)..... 2
Ford v. Ford, 371 U. S. 187 (1962)..... 1,2
Halvey v. Halvey, 330 U. S. 610 (1947)..... 1
Kovacs v. Brewer, 356 U. S. 604 (1957..... 1
Mallette v. Mallette, 220 Ga. 401, 139 S. E. 2d 322 (1964).. 3
United States v. Johnston, 268 U. S. 200, 227..... 2
Whitaker v. Whitaker, 237 Ga. 895, 230 S. E. 2d 486 (1976).. 2
Wrede v. Beuke, 221 Ga. 778, 147 S. E. 2d 324 (1966)..... 3

STATEMENT OF THE CASE

The Respondent would add the following to the Petitioner's Statement of the Case.

The Georgia trial court found that the child in this case had been abandoned and that it was necessary and it was an emergency to protect the child because the child had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother and that it was in the best interest of the child that he be and remain with his father and that the final decree entered in this matter be modified and the custody be awarded to the Respondent in this case.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

_____

NO._____

_____

The Respondent, JAMES THOMAS WEBB, respectfully prays that a writ of certiorari not be issued to review the judgment and opinion of the Georgia Supreme Court entered on April 8, 1980, and its denial of rehearing entered April 22, 1980.

REASONS FOR NOT GRANTING THE WRIT

1. THE DECISION BELOW IS IN LINE WITH ESTABLISHED PRINCIPLES THAT THE PARAMOUNT INTEREST IN CHILD CUSTODY CASES IS THE BEST INTEREST OF THE CHILD WHICH MAY REQUIRE THE MODIFICATION OF A PRIOR CUSTODY DECREE.

As acknowledged by petitioner, the Supreme Court has never stated that full faith and credit is an absolute requirement in child custody cases. In fact, a survey of the cases indicate that the crucial focus is the "best interest" of the child and modification is acceptable if necessary to effectuate this end. See Halvey v. Halvey, 330 U. S. 610 (1947).

Subsequent cases further clarified the Supreme Court's adherence to this principle in announcing that when the issue was the custody of a child, the "best interest" test provided that a decree could be modified as needed to meet a change in circumstances. See Kovacs v. Brewer, 356 U. S. 604 (1957); Ford v. Ford, 371 U. S. 187 (1962). In addition these cases establish that it is proper for the second state to inquire into the procedural fairness afforded the parties in the initial proceeding so as to insure the basic requirements of due process

are met. See Ford v. Ford, 371 U. S. 182 (1962).

A survey of Georgia cases reveals that Georgia courts have followed closely the tenor of the rationale announced by the Supreme Court. It is clear that under Georgia case law that a custody decree of another state may be modified when there has been a change in circumstances sufficient to authorize the modification of a similar judgment rendered by the courts of Georgia. Belden v. Strickland, 218 Ga. 105 (1962). Likewise the Georgia Supreme Court authorizes an inquiry by the courts to insure that the essential requirements of due process were met when the initial decree was rendered. Whitaker v. Whitaker, 237 Ga. 895, 230 S. E. 2d 486 (1976).

It is clear that this case violates none of the principles previously alluded to. This case turns solely upon a factual determination by the Georgia trial court that the child involved had been abandoned, or in any event, neglected to the extent that the father was justified in removing the child from Florida. As noted by the Georgia Supreme Court, the evidence authorized a finding that the father retrieved the child in the face of an emergency situation created by the mother. These circumstances were deemed sufficient to afford Georgia jurisdiction under Ga. Code Ann. §74-504 (a) (3). Therefore it is clear that the focus of this case is not whether full faith and credit should have been afforded the Florida custody decree. The crux of this case turns solely upon an analysis of the particular facts involved. The sole issue is whether under the facts before it, the Georgia trial court acted in the best interest of the child. As noted by this court in United States v. Johnston, 268 U. S. 200, 227, "We do not grant a certiorari to review evidence and discuss specific facts".

Under the circumstances of this case the trial court

acted properly in denying the Florida judgment full faith and credit since the mother was guilty of neglect and abuse.

Respondent admits that there was lacking the cooperation between states sought under the Uniform Child Custody Jurisdiction Act. In fact as noted by the Supreme Court both Georgia and Florida failed to comply with the provisions addressing simultaneous proceedings in other states. However it should be noted that under the provisions of the Uniform Child Custody Act, if the child was lawfully in Georgia, Florida acted improperly in assuming jurisdiction over the action, (§61.133 Ga. Code Ann. §74-115 (Supp 1980) and could not modify the Georgia decree. It also appears that the trial court was unaware of the Florida action until it had concluded. In fact the Georgia trial court was informed of the Florida action at the hearing on the petitioner's motion to dismiss for lack of jurisdiction. At this time, petitioner presented the final order of the Florida court which had been entered approximately three weeks earlier. The Georgia Supreme Court reasoned that under these circumstances there was no need for additional inquiry under Ga. Code Ann. §74-507 since it was apparent that the Florida action had concluded. To dismiss the case at this point would have been contrary to the principles of judicial economy and orderly administration of justice underlying Ga. Code Ann. §74-507. It being clear that all parties were properly before the Georgia court, the trial judge acted properly in conducting the trial.

Finally, as noted by the Georgia Supreme Court a trial judge has broard discretion in determining whether there has been a material change in circumstances reflecting the welfare of the child so that custody should be changed. Wrede v. Beuke, 221 Ga. 778, 147 S. E. 2d 324 (1966), Mallette v. Mallette, 220 Ga. 401, 139 S. E. 2d 322 (1964). In the instant case there

was evidence to support the trial court's finding that the mother had acted improperly in leaving the child alone for the weekend without adult supervision. In addition, the Georgia decree placing custody in the father was entered long enough after the Florida court had improperly ruled in the case to justify the Georgia court finding a material change in the circumstances surrounding the custody of the child.

2. RESPONDENT'S CONDUCT WAS NOT CONTRARY TO THE PURPOSES SET FORTH IN THE UNIFORM CHILD CUSTODY JURISDICTION ACT.

Respondent agrees that one of the primary purposes of the Uniform Child Custody Jurisdiction Act is to deter the abduction of children. However that purpose is not the issue in this case. The facts support a finding that the Georgia Trial Court had jurisdiction under Ga. Code Ann. §74-504 a (1), (2) and (3). The instant case did not involve the unlawful taking of a child into another state for the purpose of obtaining a more favorable forum. Instead, the respondent returned to Georgia with his son after having been called by Florida authorities concerning his welfare. It should be further noted that rather than returning to a more favorable forum the respondent was obliged to return to the same court which had previously awarded custody of the child to the mother. It was this very Court which found the material change in circumstances sufficient to warrant a modification of the prior custody decree, issued by this court in 1977 approximately two years before.

It is clear that the Respondent's conduct in no way fits the statutory requirements of Ga. Code Ann. §74-509 which sets forth the grounds which a court can deny jurisdiction for reprehensible conduct. Section 74-509 (b) provides: "Unless required in the interest of the child, the court should not

exercise tis jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody, has improperly retained the child after a visit or other temporary relinquishment of physical custody..." [Emphasis added]. This statute codifies the rule that the principal focus remains the interest of the child. It also illustrates that under the facts of this case the respondent has not acted contrary to the purposes set forth in Ga. Code Ann. §74-501 et seq.

CONCLUSION

It being clear that the critical factor in this case was a factual determination by the court as to what was in the best interest of the child and since this court does not review evidence and specific facts, certiorari should be denied.

Respectfully submitted,

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No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

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Petitioner,

v.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

The question presented for review is as follows:

Does Article IV, §I of the United States Constitution, demand that Georgia, a signatory to the Uniform Child Custody Jurisdiction act, give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction over an action to modify a custody decree when no intervening changes of circumstances had occurred since the rendition of the Florida decree?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

OPINION BELOW viii

JURISDICTION viii

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ix

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 5

ARGUMENT:

I. HISTORICAL REVIEW OF THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE TO JUDICIAL PROCEEDINGS 7

II. GEORGIA ERRED IN FAILING TO EXTEND FULL FAITH AND CREDIT TO THE FLORIDA DECREE SINCE THE FLORIDA DECREE MET ALL REQUIREMENTS FOR JURISDICTION, DUE PROCESS AND FINALITY REQUIRED FOR ITS APPLICATION 10

A. The Florida Court Acquired *In Personam* Jurisdiction over Respondent 10

a. Respondent had sufficient contacts with Florida to make assumption of jurisdiction appropriate 11

b. Respondent was afforded actual notice and an opportunity to be heard 12

B. Personal Jurisdiction: The Confusing Opinion of May v. Anderson 13

C. Florida Assumed Jurisdiction in Compliance with the Uniform Child Custody Jurisdiction Act 18

D. The Decree of the Florida Court was Res Judicata to all Issues of Law and Fact then Existing and was thereby Entitled to Full Faith and Credit in Georgia 24

E. There was no Change of Conditions or Supervening Events Between the Rendition of the Florida Decree and Georgia's Assumption of Jurisdiction which Justified the Refusal of the Georgia Court to Extend Full Faith and Credit 28

III. EXTENDING FULL FAITH AND CREDIT TO CUSTODY DECREES WOULD PROMOTE ORDERLY INTERSTATE CUSTODY LITIGATION 30

IV. CONCLUSION 33

V. APPENDIX 1a

TABLE OF AUTHORITIES

Cases: *Page*

Adam v. Saenger,
303 U.S. 59, 58 S.Ct. 454, 82 L.Ed. 649 (1938) 8

Bannister v. Bannister,
240 Ga. 518, 24 S.E.2d 247 (1978) 27

Barrentine v. Barrentine,
210 Ga. 749, 82 S.E.2d 857 (1954) 27

Broderick v. Rosner,
294 U.S. 629 55 S.Ct. 589, 79 L.Ed. 1100 (1935)..... 9

Brown v. Felson,
442 U.S. 127, 131, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979).....30

Durfee v. Duke,
375 U.S. 106, 109, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963)..... 30

Estin v. Estin,
334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561, 1568 (1948)..... 8

Fautleroy v. Lum,
210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039, 1042 (1908)..... 7,8

Ford v. Ford,
376 U.S. 197, 83 S.Ct. 273, 9 L.Ed.2d 240 (1962)..... 25

Griffin v. Griffin,
327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946)..... 9

Hanson v. Denckla,
357 U.S. 235, 246, 78 S.Ct. 1228, 1235 2 L.Ed.2d 1283 (1958)..... 11

Hegler v. Hegler,
383 So.2d 1134 (Fla. App. 1980)..... 27

Hess v. Pawlowski,
274 U.S. 352, 47 S.Ct. 632, 71 L. Ed. 1091 (1927)..... 14

International Shoe Co. v. Washington,
326 U.S. 310 66 S.Ct. 154, 90 L.Ed. 95 (1945) ..... *Passim*

Johnson v. Muelberger,
340 U.S. 581, 585, 71 S.Ct. 474, 95 L.Ed. 552 (1951)..... 32

Kovacs v. Brewer,
356 U.S. 604, 78 S.Ct. 963, 2 L.Ed. 1008 (1958)..... 28,30

Kulko v. Superior Court,
436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978)..... 11

Application of Lang,
9 App. Div. 2d 401, 193 N.Y.S. 2d
763 (1959)..... 21

Lynde v. Lynde,
181 U.S. 183, 21 S.Ct. 555, 45 L.Ed. 810
(1901)..... 9

Marin v. Augedahl,
247 U.S. 142, 149, 38 S.Ct. 452, 454,
62 L.Ed. 1038 1042 (1918)..... 8

May v. Anderson,
345 U.S. 529, 73 S.Ct. 840, 97 L.Ed. 1221
(1953).....13,14,15,17

Milliken v. Meyer,
311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278,
282 (1940)..... 8,14,15

Milwaukee Co. v. M.E. White,
296 U.S. 268, 276, 277, 56 S. Ct. 229, 234,
80 L.Ed. 220 (1935)..... 7

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)..... 18

New York ex. rel. Halvey v. Halvey,
330 U.S. 610, 67 S.Ct. 903, 91 L.Ed. 1133, 1136
(1947)..... 9,25

Paull v. Cook,
135 W. Virginia 833, 65 S.E.2d 750 (1951) 8

Pennoyer v. Neff,
95 U.S. 714 (1877)..... 14,15

Riley v. New York Trust Co.,
315 U.S. 432, 62 S.Ct. 608, 86 L.Ed. 885
(1942)..... 7,24

Schaffer v. Heitner,
433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683
(1977)..... 10

Sherrer v. Sherrer,
334 U.S. 343, 355, 68 S.Ct. 1087,
92 L.Ed. 1429 (1948)..... 30

Sistare v. Sistare,
218 U.S. 1, 30 S.Ct. 682, 54 L.Ed. 905 (1910) 9

Stricklin v. Stricklin,
383 So. 2d 1183 (Fla. App. 1980) 27

Thomas v. Thomas,
221 Ga. 652 146 S.E.2d 463 (1980) 27

Webb v. Webb,
245 Ga. 650, 266 S.E.2d 463 (1980) 3

Whitaker v. Whitaker,
237 Ga. 895, 230 S.E.2d 486 (1976) 24

Yearta f/k/a Scroggins v. Scroggins,
245 Ga. 831, 268 S.E.2d 151 (1980) 24

Constitution:

Article IV, Section I ..... *Passim*

Statutes:

United States

28 U.S.C. §687 7

Florida, West's F.S.A.

§61.1302 19
§61.1306(5) 20
§61.1308(1) (a) 1 & 2 20
§61.1308(1) (b) 20
§61.1308(1) (c) 20
§61.1312 23
§61.1314 20
§61.1316 20
§61.1321 22
§61.1324 23
§61.1328 27

Georgia, Ga. Code

§30-127 27
§74-501 19
§74-503(e) 20

§74-504(a) (1) 20
§74-506 23
§74-512 23
§74-513 27
§74-514 23
§74-515 27

Other Authorities

96 A.L.R. 3rd 968 32

Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy Caught in the Conflict of Laws". 22 Vanderbilt L. Rev. 1207 (1969)..... 17

Bodenheimer, "The Uniform Child Custody Jurisdiction Act" 3 Family Law Quarterly 45 (1974)..... 17,18

43 C.J.S. Infants §6(b) (1978) 15

123 Cong. Rec. E6151 (daily Ed. October 6, 1977)..... 18

124 Cong. Rec. S501 (daily Ed., June 25, 1978)..... 18

Freed and Foster, "Divorce in the Fifty States: An Overview as of August 1, 1980," 6 Family Law Reporter 4043 (Sept. 2, 1980)..... 19

Hazard, "May v. Anderson: Preamble to Family Law Chaos," 45 Va. L. Rev. 379 (1959) 15,17

Kutun and Fox, "Closing the Custody Floodgate: Florida Adopts the Uniform Child Custody Jurisdiction Act", 6 Fla. State L. Rev. 408..... 22

Ratner, "Child Custody in a Federal System", 62 Michigan L. Rev. 795 (1964)..... 15,17,18

Restatement (First) of Conflict of Laws, §§117, 145-148 (1934)..... 15,16

Restatement (Second) of Conflict of Laws §§69, 70 (1971) 17

Sanders, "Prevention of Child Stealing: The Need for a National Policy, 11 Loyola of Los Angeles L. Rev. 829 (1978) 17

Stern, "Stemming the Proliferation of Parental Kidnapping": New York's Adoption of the Uniform Child Custody Jurisdiction Act 45 Brooklyn L. Rev. 89 (1978) 19,21

U.C.C.J.A. (ULA) § § 1-13 (1979) ..... *Passim*

OPINION BELOW

The opinion of the Georgia Supreme Court is reported at 245 Ga. 650, 266 S.E.2d 463 (J.A. 48-51). The denial of Petitioner's Motion for Rehearing by that court is found at 245 Ga. 653, 266 S.E.2d 463 (J.A. 53).

JURISDICTIONAL STATEMENT

The Georgia Supreme Court affirmed the trial court's ruling on April 8, 1980. Following Petitioner's Motion for Rehearing filed on April 14, 1980, said court denied rehearing on April 22, 1980.

Petitioner's Petition for Writ of Certiorari to the Supreme Court of Georgia was docketed June 27, 1980 and certiorari was granted on October 6, 1980 by this court.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(3) to review by writ of certiorari the final rulings of the highest court of Georgia which involve a federal constitutional law question.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

Constitution

Article IV, Section I of the United States Constitution

Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Federal Statute

28 U.S.C. §687; 28 U.S.C.A. §1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

State Statutes

Florida

Uniform Child Custody Jurisdiction Act

Page

West's F.S.A. §61-1302 Appendix A ..... 1 (a)
West's F.S.A. §61-1304 Appendix A ..... 1 (a)
West's F.S.A. §61-1306 Appendix A ..... 3 (a)
West's F.S.A. §61-1308 Appendix A ..... 6 (a)
West's F.S.A. §61-131 Appendix A ..... 9 (a)
West's F.S.A. §61-1312 Appendix A ..... 10 (a)
West's F.S.A. §61-132 Appendix A ..... 12 (a)
West's F.S.A. §61-1324 Appendix A ..... 14 (a)
West's F.S.A. §61-1326 Appendix A ..... 15 (a)
West's F.S.A. §61-1328 Appendix A ..... 16 (a)

Georgia

Ga. Code §30-127

(a) In all cases of divorce granted, the party not in default shall be entitled to the custody of the minor children of the marriage. The court, however, in the exercise of a sound discretion, may look into all the circumstances of the parties, including the improvement of the health of the party seeking a change in custody provisions, and, after hearing both parties, make a different disposition of the children, placing them, if necessary, in possession of guardians appointed by the judge of the probate court. The court may exercise a similar discretion pending the application for divorce. In all such cases and in cases where a change in custody is sought,

where the child has reached the age of 14 years, such child shall have the right to select the parent with whom such child desires to live and such selection shall be controlling unless the parent so selected is determined not to be a fit and proper person to have the custody of said child.

(b) In any case in which a judgment has been entered awarding the custody of a minor, on the motion of any party or on the motion of the court that portion of the judgment effecting visitation rights between the parties and their minor children may be subject to review and modification or alteration, but not more often than once in each two-year period following the date of the entry of such judgment, without the necessity of any showing of a change in any material conditions and circumstances of either party or the minor. The provisions of this section shall not limit or restrict the power of the court to enter a judgment relating to the custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.

(c) In the event of any conflict between this section and any provision of Chapter 74-5, the provision of Chapter 74-5 shall apply.

(Acts 1957, pp. 214, 412; 1962, pp. 713, 714; 1976, p. 1050; 1978, pp. 258, 272, eff. Jan. 1, 1979.)

Uniform Child Custody Jurisdiction Act

Page

Ga. Code §74-501 Appendix B ..... 1 (b)
Ga. Code §74-502 Appendix B ..... 1 (b)
Ga. Code §74-503 Appendix B ..... 4 (b)
Ga. Code §74-504 Appendix B ..... 7 (b)

Ga. Code §74-505 Appendix B ..... 9 (b)
Ga. Code §74-506 Appendix B ..... 10 (b)
Ga. Code §74-510 Appendix B ..... 12 (b)
Ga. Code §74-512(c) Appendix B ..... 14 (b)
Ga. Code §75-513 Appendix B ..... 16 (b)
Ga. Code §74-514 Appendix B ..... 17 (b)

STATEMENT OF THE CASE

Petitioner Leah Lynn Parrish Webb and Respondent James Thomas Webb were divorced in Nashville, Georgia on September 22, 1977. (J.A. 2, 3). Petitioner was awarded custody of the parties' minor child, Shane Scott Webb, who was four years old at the time of the divorce. Petitioner subsequently moved to Florida in November of 1977 with the minor child (T.83) where she has continued to live until the present time. Contrary to the decree, on February 17, 1979, Respondent, who was residing in Nashville, Georgia, went to Petitioner's residence in Gainesville, Florida and without the knowledge or permission of Petitioner took Shane Webb back to Georgia. (T.24). On March 8, 1979, Petitioner filed an action in the Circuit Court, Eighth Judicial District, Alachua County, Florida, under the Uniform Child Custody Jurisdiction Act for custody of Shane Webb. (J.A.6-16). A Restraining Order was entered by that court without notice on March 8, 1979, (J.A.17, 18), and a copy of this Order and the petition for custody was served personally on Respondent at his residence in Nashville, Georgia on March 13, 1979. (J.A.15). Though personally served, the father made no response or appearance in the Florida action (J.A.25), but instead on March 23, 1979, Respondent filed an action for custody in the Superior Court of Berrien County, Georgia. (J.A.20-24). A copy of this petition was served personally on Petitioner at her residence in Alachua County, Florida on March 29, 1979. (J.A.23,24). On April 18, 1979, and prior to any hearing on the petition filed by Respondent in Georgia, the Circuit Court, Eighth Judicial District, Alachua County, Florida, after hearing evidence on the issue of custody, entered a Final Judgment which es-

tablished the Georgia decree of September 22, 1977, as the judgment of the court and granted custody of Shane Webb to Petitioner. (J.A.25, 26). Respondent, throughout, failed to make any appearance in the Florida action.

On April 24, 1979, Petitioner filed a Motion to Dismiss and Answer in the action filed by Respondent in the Superior Court of Berrien County, Georgia, (J.A.27-32) and on April 26, 1979, filed an amendment thereto. (J.A.33-37). Petitioner denied that the Superior Court of Berrien County, Georgia had jurisdiction over her person, or over the subject matter of the action, and asked that full faith and credit be accorded to the Florida judgment entered on April 18, 1979. A counterclaim for a writ of habeas corpus was also filed. (J.A.36).

On May 10, 1979, a hearing was held in the Superior Court of Berrien County, Georgia, and in an order dated June 21, 1979 this Georgia court found that it had jurisdiction to determine custody on three bases: (1) Georgia was the home state of the minor child, (2) the child and one contestant had a significant connection with Georgia and there was substantial evidence concerning the child's present or future protection, training, and personal relationships in the state, and (3) the child had been abandoned by Petitioner in Gainesville, Florida, and there was an emergency situation requiring protection of the minor child.[1] (J.A.39,40). Totally ignoring the Florida decree, the court awarded

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[1]The only evidence relied upon by the Georgia court to support the emergency situation and abandonment was the testimony of the Respondent. Petitioner, on the other hand, had testified that she had arranged for care for the child with her neighbors prior to her leaving on a weekend visit. (T.89,90). Respondent had testified previously that the child was with these neighbors when the Respondent arrived in Florida to take the child back to Georgia. (T.24).

custody of Shane Webb to Respondent, upon finding that Petitioner had moved six times since her divorce from Respondent, had abandoned the child in Gainesville, Florida by leaving him without adult supervision for a weekend, and was not properly caring for the child. (J.A.39). The court found that Respondent had remarried and owned a home, and that his home life was more conducive to raising a child than that of the mother, and that it was in the child's best interest to remain with his father. (J.A.40,41).

On July 19, 1979, Petitioner appealed the Judgment of the Superior Court of Berrien County, Georgia, to the Supreme Court of Georgia. (J.A.42, 43). On April 8, 1980, the Supreme Court of Georgia at 245 Ga. 650, 266 S.E.2d 463 (1980) (J.A.48-51), affirmed the judgment of the Superior Court of Berrien County, Georgia. In an opinion expressing the views of four Justices, the Court found that the evidence in the trial court authorized a finding that Respondent's taking of Shane Webb from Florida was justified by the existence of an emergency situation. It was also held that while the trial court had a duty to confer with the Florida court concerning the pending action there, the Florida court had a similar responsibility which was not met. The Georgia Supreme Court held that since the Florida action had gone to final judgment before the Georgia action was heard, a dismissal of the Georgia action would have meant that the custody dispute between the parties could not have been resolved by any court, and therefore, the pendency of the Florida action did not preempt the jurisdiction of the Georgia court. As to the trial court's findings of changed circumstances affecting the welfare of the child, the Supreme Court of Georgia found that there had been no abuse of discretion, and the award of custody to Respondent was affirmed.

Petitioner's Enumerations of Error filed in the Georgia Supreme Court raised, among other issues, the question of whether Georgia was required to grant the Florida judgment full faith and credit, and dismiss the Georgia case because the claims raised therein were *res judicata.* The Supreme Court of Georgia, though recognizing the finality of the Florida judgment, declined to specifically rule on the full faith and credit question presented. However, by ruling that the Florida decree did not preempt Georgia's jurisdiction, and basing its own jurisdiction on findings inconsistent with those of the Florida Court, it impliedly rejected the notion that full faith and credit should have been accorded to the Florida decree.

A dissenting opinion by three Justices stated that the issue of whether an emergency situation exists or abandonment has occurred should be determined by the courts in the state where these acts are alleged to have happened. *Supra.* at 653-64, 266 S.E. 2d at 465-66. (J.A.53). This opinion characterized the majority opinion as condoning "child snatching."

Petitioner sought rehearing by the Supreme Court of Georgia on April 14, 1980. *Supra.* at 653, 266 S.E. 2d at 463 (J.A.52). Rehearing was denied on April 22, 1980. *supra.* at 653, 266 S.E. 2d at 463.

Petitioner filed for leave to proceed *in forma pauperis* in this Court, and for a writ of certiorari to the Supreme Court of Georgia on June 27, 1980; leave to proceed *in forma pauperis* and a writ of certiorari were granted by this Court on October 6, 1980. (J.A.54).

On or about November 1, 1980, Respondent requested that Petitioner come to Georgia and pick up the minor child. Petitioner complied with his request and has had the child with her in Florida since that time. There has been no change

in the legal status of the child and no agreement between the parties concerning a permanent arrangement for custody of the minor child. Petitioner also has a claim for back child support.

SUMMARY OF ARGUMENT

Article IV § 1 of the Constitution of the United States provides that full faith and credit shall be given in each state to judicial proceedings of every other state. This court, however, on a number of occasions has determined that certain judgments were not entitled to full faith and credit. Judgments appropriately refused full faith and credit were those obtained where there was a lack of subject matter or personal jurisdiction in the rendering court, where due process was not afforded in the rendering court, where fraud existed in the original court proceedings, where the law of the state rendering the judgment did not view the judgment as having a conclusive or res judicata effect, and in the case of custody decrees, where there has been a material change in conditions since the rendering of a child custody decree, and the law of the state which rendered the decree permitted a modification of the decree on that basis.

In the case now before this Court, the Florida custody decree, which was refused full faith and credit by the Georgia courts, was not a judgment falling into the above listed categories, and therefore, was entitled full faith and credit. The court in Florida, rendering the judgment enforcing a prior decree had subject matter jurisdiction and personal jurisdiction over Respondent pursuant to state law, pursuant to the Uniform Child Custody Jurisdiction Act in Florida, and pursuant to principles for exercise of personal juris-

diction and satisfaction of due process set down in *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

There have been no allegations of fraud in the rendering court and no factual basis for such allegations.

Furthermore, Florida custody decrees since the adoption of the Uniform Child Custody Jurisdiction Act, are conclusive and res judicata. Although Florida law does permit a modification of custody on the basis of changed conditions, there was no change of conditions raised by Respondent occurring within the period of three weeks between the hearing and order in Florida on April 18, 1979 and the hearing in Georgia on May 10, 1979.

Child abduction by non-custodial parents with subsequent relitigation of custody in forums of their choice has become a serious national problem. Attempts by the great majority of states to deal with this problem through the adoption of the Uniform Child Custody Jurisdiction Act have been less than fully successful in the absence of a clear statement by this Court on the applicability of the Full Faith and Credit Clause to child custody decrees.

Therefore, there being no legal rationale previously articulated by this Court which can justify the refusal of the Georgia court to grant full faith and credit to the Florida decree, and there being a need for this Court to recognize the applicability of the Full Faith and Credit Clause to child custody decrees to thwart "child snatching" and relitigation in inappropriate forums, the decision of the Georgia Supreme Court, failing to give full faith and credit to the Florida decree, should be reversed.

ARGUMENT

I.

HISTORICAL REVIEW OF THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE TO JUDICIAL PROCEEDINGS

Article IV, § 1 of the United States Constitution directs that "Full Faith and Credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other state." The Article also provides that "Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof." By the Act of May 26, 1790, 28 U.S.C. § 687, 28 U.S.C.A., § 1738, Congress provided that judgments "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

There have been very few exceptions to the application of its provisions because the purpose of Article IV § 1 was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of origin. *Milwaukee Co. v. M. E. White,* 296 U.S. 268, 276, 277, 56 S.Ct. 229, 234, 80 L.Ed. 220 (1935). A judgment from a sister state must be given full faith and credit even though the cause of action merged in the judgment could not have been enforced in the state where the enforcement of the judgment is sought. *Fauntleroy v. Lum,* 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039, 1042 (1908), *Riley v. New York Trust Co.,* 315 U.S.

432, 62 S.Ct. 608, 86 L.Ed. 885 (1942). The denial of full faith and credit to a judgment from a sister state is not justified even when the rendering court made a mistake in interpreting the law of the second state, *Fauntleroy v. Lum, supra.* As stated in *Marin v. Augedahl,* 247 U.S. 142, 149, 38 S.Ct. 452, 454, 62 L.Ed. 1038, 1042 (1918) "whether the decision was right or wrong is not open to discussion here. If wrong it was subject to correction on proper application to the court which made it, or on appeal, but it was not void or open to collateral attack."

Procedural irregularities in the court of the first state, not amounting to a denial of due process of law, have also been held sufficient to invalidate the judgment rendered in the first state. *Paull v. Cook,* 135 W.Va. 833, 65 S.E.2d 750 (1951).

One exception that has been allowed in granting of full faith and credit to a judgment of a sister state is when there was a lack of subject matter or personal jurisdiction in the court of the first state. As held in *Estin v. Estin,* 334 U.S. 541, 68 S.Ct 1213, 92 L.Ed. 1561, 1568 (1948), "A judgment of a court having no jurisdiction to render it is not entitled to the full faith and credit which the Constitution and statutes of the United States demand." However, if the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is presumed unless disproved by extrinsic evidence or by the record itself. *Adam v. Saenger,* 303 U.S. 59, 58 S.Ct. 454, 82 L.Ed. 649 (1938); *Milliken v. Meyer,* 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 282 (1940).

Other exceptions to the granting of full faith and credit to judgments of sister states include judgments obtained in violation of procedural due process. For instance, a judgment for alimony arrearage entered without any actual

notice to the husband and without any form of service of process calculated to give him notice of the proceedings was not entitled to full faith and credit in a sister state. *Griffin v. Griffin,* 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946).

Judgments that are not final under the law of the state whosecourt granted them also have been held not entitled to full faith and credit in a sister state. Although there is nothing in the Full Faith and Credit Clause specifically limiting its scope to final judgments, the Supreme Court has said:

. . ."[A] judgment has no constitutional claim to a more conclusive or final effect in the state of the forum that it has in the state where rendered. . .[I]t is clear that the state of the forum has as much leeway to disregard the judgment, to qualify it, or to depart from it as does the state where it was rendered." *New York ex. rel. Halvey v. Halvey,* 330 U.S. 610, 614-615, 67 S.Ct. 903, 906, 91 L.Ed. 1133, 1136 (1947).

Decrees for alimony, for example, whose periodic payments can be modified by the rendering court at any time after payments are in arrears are not final judgments pursuant to the finality requirements articulated by this Court in *Lynde v. Lynde,* 181 U.S. 183, 21 S.Ct. 555, 45 L.Ed. 810 (1901). Decrees for alimony which by state law cannot be changed after they are rendered or when the sums have become past due, however, are entitled to full faith and credit. *Sistare v. Sistare,* 218 U.S. 1, 30 S.Ct. 682, 54 L.Ed. 905 (1910).

Despite the few exceptions previously discussed, the Full Faith and Credit Clause is strictly construed and leaves little room for the non-recognition of another state's judgments. *Broderick v. Rosner,* 294 U.S. 629, 55 S.Ct. 589, 79 L.Ed. 1100 (1935).

II.

GEORGIA ERRED IN FAILING TO EXTEND FULL FAITH AND CREDIT TO THE FLORIDA DECREE SINCE THE FLORIDA DECREE MET ALL REQUIREMENTS FOR JURISDICTION, DUE PROCESS AND FINALITY REQUIRED FOR ITS APPLICATION

A. The Florida Court Acquired In Personam Jurisdiction Over Respondent.

By entering the state of Florida to remove Shane Webb from Petitioner, the child's legal custodian, Respondent subjected himself to the jurisdiction of the Florida court. When he was personally served in Georgia with process in the Florida action brought by Petitioner, Respondent was properly before the Florida court and was therefore bound by its judgment on the question of whether Petitioner's conduct in February of 1979 constituted grounds to change legal custody of the parties' child. He should not have been permitted to relitigate that issue in the Georgia court.

In *Shaffer v. Heitner,* 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), this court held that every assertion of state court jurisdiction must be evaluated under the standards of *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945). The validity of the exercise of jurisdiction by the Florida court in this case thus depends on whether Respondent had sufficient "contacts, ties, or relations" with Florida to make an assumption of jurisdiction appropriate and whether the out of state service employed did not offend traditional notions of fair play. *Supra,* 326 U.S. at 319.

a. Respondent had Sufficient Contacts with Florida to make Assumption of Jurisdiction Appropriate

An essential criterion in determining the existence of sufficient contacts for the exercise of personal jurisdiction over a non-resident is whether the quality and nature of the defendant's activity is such that it is reasonable and fair to require him to conduct his defense in that state. *Supra,* 326 U.S. at 316, 317, 319. No mechanical test can be employed, but each case must be weighed to determine whether the requisite "affiliating circumstances" are present. *Hanson v. Denckla,* 357 U.S. 235, 246, 78 S.Ct. 1228, 1235, 2 L.Ed.2d 1283 (1958). *accord. Kulko v. Superior Court,* 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d (1978).

The state of Florida has a legitimate and compelling interest in insuring that valid child custody orders are enforced with respect to minor children within its territory. Respondent's removal of the child from Florida in violation of a valid custody order offended that interest. Since the child and the Petitioner were residents of Florida at the time of Respondent's removal of the child, and since the activity of removing the child in violation of an existing custody decree was carried out in Florida, it is valid and fair for him to defend an action seeking enforcement of the decree in Florida. The only alternative, that of forcing Petitioner to pursue the Respondent and bring suit in his home territory, would certainly be unfair to Petitioner, especially since virtually all evidence concerning the child's care, the wrongful removal, and alleged "abandonment" existed in Florida.

The assertion of personal jurisdiction over Respondent by the Florida court is not inconsistent with this court's decision in *Kulko v. Superior Court,* 346 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978). In that case, the attempt to exercise

personal jurisdiction by a California court over a non-resident parent in a child support proceeding was found to offend the Due Process Clause of the Fourteenth Amendment. The only significant contact, however, that the non-resident had with California was his consent to his minor child's residence in the state with his mother. This was found insufficient to justify California state court jurisdiction, even though it might arguably have had some effect in that state. Unlike the facts in *Kulko,* Respondent's conduct in Florida was concrete and performed while he was physically present in the state. His removal of Shane Webb from Florida without legal sanction from the courts of any state, was the basis for the action brought against Respondent in Florida, and therefore satisfies the minimum contacts requirement for state court jurisdiction.

b. Respondent was Afforded Actual Notice and An Opportunity to be Heard

In addition to satisfaction of minimum contacts requirements for the exercise of jurisdiction over Respondent, the Florida court also employed a method of service which meets requirements for due process. Respondent was personally served with the Florida petition by a law enforcement officer on March 13, 1979, some 35 days prior to the hearing on the matter in Florida. (J.A.15). Respondent never challenged the fact of or the sufficiency of the service upon him in either the Florida or Georgia proceedings (J.A.25)[2] and, in fact, employed the same service on Petitioner in the Georgia action he filed subsequent to service on him of the Florida petition.

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[2]The personal service employed is specifically provided for in the Uniform Child Custody Jurisdiction Act §5 adopted at Ga. Code §74-506 and West's F.S.A. §61.1312.

B. Personal Jurisdiction: The Confusing Opinion of May v. Anderson

The one case in which this court has considered requirements for a court's jurisdiction in a custody case for purposes of the application of Full Faith and Credit was *May v. Anderson,* 345 U.S. 529, 73 S.Ct. 840, 97 L.Ed. 1221 (1953). Unfortunately, the plurality opinion in that case, rather than resolving the issue, has caused considerable confusion. In *May, supra,* the parties were married in Wisconsin and lived in Wisconsin until separation when Mrs. Anderson (May) went to Ohio with the children in December, 1946. The husband filed suit for divorce and custody of the minor children in Wisconsin in January, 1947. Service of process upon Mrs. Anderson (May) was by personal delivery of a copy of the Wisconsin summons and petition authorized by Wisconsin statutes for use in an action for divorce, but not clearly available for use in custody proceedings.[3] Mrs. Anderson entered no appearance, and the Wisconsin court entered a divorce decree granting Mr. Anderson custody of the children. Mr. Anderson, armed with the divorce order, retrieved the children from Mrs. Anderson. In 1951, the children visited with Mrs. Anderson (May), and she thereafter refused to return them. Mr. Anderson filed a writ of habeas corpus in Ohio based on his Wisconsin judgment. The Ohio Probate Court granted Full Faith and Credit to the Wisconsin decree, and issued an order allowing the writ and directing that the children be released to the custody of the father. The Ohio Court of Appeals affirmed the Probate Court order, and Mrs. Anderson (May) appealed.

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[3]*May v. Anderson,* 345 U.S. 529, 530-31, 73 S.Ct. 840, 842, 97 L.Ed. 1221 (1953).

The applicability of the Full Faith and Credit Clause to the situation presented in *May* was a difficult issue dividing the court four ways. The plurality opinion written by Justice Burton held that full faith and credit need not have been given to the Wisconsin decree awarding custody of the children to Mr. Anderson.

Failing to distinguish prior cases defining *in personam* jurisdiction[4] and especially guidelines set forth in *International Shoe Company v. Washington,* 326 U.S. 310, 73 S.Ct. 154, 90 L.Ed. 95 (1945), Justice Burton apparently created a new rule that a custody decree, though meeting due process requirements, need not be given full faith and credit if the defendant had not been domiciled, resident nor present within the rendering state. Although it was clear from the recitation of the facts that the extraterritorial service employed by Mr. Anderson in the original Wisconsin proceedings was not specifically permitted in custody proceedings initiated in Wisconsin, Justice Burton's holding is not limited to these facts.[5] To sustain his position, Justice Burton relied on *Pennoyer v. Neff,*[6] as applied in *Estin v. Estin,*[7] a case where an ex parte divorce was held not to cut off the absent wife's right to support under a prior order. Justice Burton's argument was that since the right to custody is "far more precious" than mere money claims, then

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[4]*Milliken v. Meyer,* 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278 (1940), *Hess v. Pawlowski,* 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927); *International Shoe Co. v. Washington, supra.*

[5]*May v. Anderson,* 345 U.S. at 531, 73 S.Ct. at 842.

[6]95 U.S. 714 (1877).

[7]334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561 (1948).

custody cannot be denied without personal jurisdiction in these cases.[8]

Justice Burton's view, however, has been heavily criticized. First, this court, even at that time, had sapped *Pennoyer v. Neff* of much of its strength through cases such as *International Shoe v. Washington*[9] and *Milliken v. Meyer.*[10] Secondly, *Pennoyer v. Neff* itself had made an exception for cases involving "status," and many authorities feel that problems of children and custody problems particularly should be viewed as "status" cases.[11]

Justice Burton's application of stricter rules for personal jurisdiction over a party in custody cases does little to prevent or discourage a parent, who believes his chances of gaining custody in one state are poor, from circumventing that state's power by avoiding service and forcing the other parent to litigate custody in a more favorable forum.

The plurality opinion reserves the question of what rule should apply when a parent "kidnaps" his child and then deliberately fails to appear in an action brought by the other parent.[12] Nevertheless, Justice Burton failed to make note that the prolonged litigation in the case before him began when the mother wrongfully "retained" her children in

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[8]See Hazard, "*May v. Anderson:* Preamble to Family Law Chaos," 45 Va.L. Rev. 379 (1959). Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws." 22 Vanderbilt L.Rev. 1207 (1969).

[9]*Id.*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

[10]*Id.*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

[11]Restatement (First) of Conflicts of Laws, §§117,145 (1934); Ratner, "Child Custody in a Federal System," 62 Michigan L. Rev. 795, 796 (1964); 43 C.J.S. §6(b), pp. 71-75.

[12]*Id.*, 345 U.S. at 541, 73 S.Ct. at 847, at Footnote 8.

violation of an outstanding custody decree. Thus, Justice Burton appeared to sanction unlawful retention of a child after a visitation period, but not unlawful removal from the lawful custodian in the first place.

Three Justices felt that Full Faith and Credit should have been accorded to the Wisconsin decree. Justice Jackson joined by Justice Reed argued that while personal jurisdiction of all parties as defined in the plurality opinion, is highly desirable to make certain they have valid notice and opportunity to be heard, "the assumption that it overrides all other considerations and in its absence a state is constitutionally impotent to resolve questions of custody flies in the face of our own cases."[13] The plurality opinion, according to Justice Jackson places the convenience of the leave taking parent above the welfare of the child, creating the unpleasant dilemma in *May* that neither Wisconsin nor Ohio could get jurisdiction over the parent in the adjoining state, leaving custody as an unresolved issue.[14]

Justice Jackson argued that the state of the domicile of the children, given sufficient notice to the defendant parent, should be the appropriate forum for the litigation of custody disputes. This view was a prevailing view at the time and was the view endorsed in the Restatement (First) of Conflict of Laws.[15]

Justice Frankfurter, on the other hand, held in his concurring opinion that because a child's welfare in a custody case has such a claim upon the state, its discretion should never be foreclosed by a prior adjudication.[16]

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[13]*Id.*, 345 U.S. at 541, 73 S.Ct. at 847.

[14]*Id.*, 345 U.S. at 539, 73 S.Ct. at 846.

[15]Restatement (First) of Conflict of Laws, § § 145-148 (1934).

[16]*Supra*, 345 U.S. at 536, 73 S.Ct. at 844-45.

It is possible to distinguish the present case from *May, supra,* on two bases. First, the extraterritorial service employed in this case, unlike in *May,* was specifically intended and designed by Florida law for service on non-resident parties to custody actions. Second, and more importantly, Justice Burton did not specifically extend his opinion to situations in which the child was unlawfully or surreptitiously taken by one parent from the other. Certainly, Shane Webb, the child in the present action, was unlawfully taken without permission from the Petitioner and without prior sanction of any court.

It is clear, however, that the plurality opinion has been widely criticized for its restrictive and confusing definition of personal jurisdiction which stresses the rights of the parent having physical custody at the expense of the petitioner-parent and the minor child and benefits the parent-kidnapper by forcing the other parent into the forum of his choice.[17]

Few states have chosen to restrict their exercise of jurisdiction in custody cases in compliance with the plurality opinion. Even the Restatement (Second) of Conflict of Laws §§69, 70 (1971) does not exclusively follow the *May* holding since it finds jurisdiction to determine custody in any state where the child is domiciled, where a child is physically present, or where there is *in personam* jurisdiction over the claimants. The Uniform Child Custody Jurisdiction Act,[18]

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[17]Hazard, "*May v. Anderson,* Preamble to Family Law Chaos", 45 Va.L.Rev. 379 (1959); Ratner, "Child Custody in a Federal System," 62 Mich.L.Rev. 795 (1964); Bodenheimer, "Uniform Child Custody Jurisdiction Act, A Legislative Remedy for Children Caught in Conflict of Laws," 22 Vanderbilt L.Rev. 1207 (1969); Sanders, "Prevention of Child Stealing: The Need for a National Policy", 11 Loyola of Los Angeles L.Rev. 829, 836 (1978).

[18]Uniform Child Custody Jurisdiction Act, 9 U.L.A. 116-170.

which sets forth standards for exercise of jurisdiction in the 45 states which have adopted it, also does not follow the *May* plurality opinion. Rather its framers relied upon Justice Frankfurter's concurring opinion and the traditional definition of personal jurisdiction as articulated in *International Shoe v. Washington, supra,* and *Mullane v. Central Hanover Bank, supra,*[19] 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). The better view, therefore, is that the plurality opinion and its narrow view of *in personam* jurisdiction should be totally re-examined and recast, rather than simply distinguished on the basis of relatively minor factual differences.

C. Florida Assumed Jurisdiction in Compliance With the Uniform Child Custody Jurisdiction Act

In 1968 in response to the rising tide of parental abductions[20] and constant relitigation of custody, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction Act to

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[19]Bodenheimer, "The Uniform Child Custody Jurisdiction Act, *supra*; Ratner, "Child Custody in a Federal System," *supra*.

[20]Although no precise figures are available to indicate the number of children annually kidnapped by one of their parents, estimates range from figures as low as 25,000 to figures as high as 100,000. 124 Cong.Rec. §501 (daily Ed. June 25, 1978) (remarks of Sen. Wallop); 123 Cong.Rec. E6151 (daily Ed. October 6, 1977) (remarks of Rep. Sawyer).

bring some semblance of order into the existing chaos.[21]

At the present time there are at least 45 states, including Florida and Georgia, which have adopted the Uniform Child Custody Jurisdiction Act.[22]

Both the Florida court and the Georgia court based their jurisdiction over these custody proceedings (J.A.18,40) on the Uniform Child Custody Jurisdiction Act (hereinafter referred to as UCCJA or the Act).[23]

In reviewing the jurisdiction prerequisites for a child custody case, the Act is very broad—so broad, in fact, that it is possible to conclude in many cases that more than one State may actually be capable of accepting jurisdiction. Thus, the threshold question of whether a case may be heard becomes a bifurcated one. The court must first decide if it could accept jurisdiction and then whether it will accept jurisdiction.

Four criteria are set out to determine if a court may

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[21]Uniform Child Custody Jurisdiction Act, Commissioner's Prefatory Note 9 U.L.A. 114 (1979). See an excellent discussion of the UCCJA by Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws." 22 Vanderbilt L.Rev. 6 (1969); Bodenheimer, "The Uniform Child Custody Jurisdiction Act," p.45, in Sanford Katz' *The Youngest Minority, I* American Bar Association, Section of Family Law (1974), reprinted from Vol. III. No. 4, Family Law Quarterly; Sanders, "Prevention of Child Stealing: The Need for a National Policy" 11 Loyola of Los Angeles, L.Rev. 829 (1978), Stern, "Stemming the Proliferation of Parental Kidnapping: New York's Adoption of the Uniform Child Custody Jurisdiction Act," 45 Brooklyn L.Rev. 89 (1978).

[22]Freed and Foster, "Divorce in the Fifty States: An Overview as a August 1, 1980," 6 Family Law Reporter 4043, 4055, (September 2, 1980).

[23]Ga. Code §74-501, et. seq.; West's F.S.A. §61-1302, et. seq.

exercise jurisdiction. In the first place, a court in the child's home state[24] has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction.[25] If this alternative test produces concurrent jurisdiction in more than one state, mechanisms are provided in other sections of the UCCJA for a court to stay proceedings where other proceedings concerning the child are pending in a court of another state or for a court to decline jurisdiction upon a finding that it is an inconvenient forum.[26]

If the home state test cannot be met or as an alternative to that test, a court may assume jurisdiction because the child and his parents or the child and at least one contestant have a significant connection with the forum state, and there is available in the state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.[27]

Thirdly, a state may assume jurisdiction if "the child is physically within the state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]."[28] This extraordinary jurisdiction should be

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[24]Home state is defined as a "state in which the child immediately preceding the time involved lived with his parents. . . for at least six consecutive months." UCCJA, (U.L.A.) §2(5), West's F.S.A. §61.1306(5); Ga. code §74-503(e).

[25]UCCJA, (U.L.A.) §3(a) (1); West's F.S.A. §61-1308(1) (a) 1 & 2; Ga. Code §74-504(a) (1).

[26]UCCJA, (U.L.A.) §§6,7; West's F.S.A. §61-1314, §61.1316.

[27]UCCJA, (U.L.A.) §3(a) (2); West's F.S.A. §61.1308(1) (b).

[28]UCCJA, (U.L.A.) §3(a) (3); West's F.S.A. §61.1308(1) (c).

reserved for extraordinary circumstances, See *Application of Lang*, 9 app.Div. 2d 401, 193 N.Y.S.2d 763 (1959), and should not be the basis of jurisdiction when there is child neglect without emergency or abandonment.[29]

Misuse of this emergency jurisdiction provision to circumvent the Act may be the most serious problem which the UCCJA faces in effectively preventing child abduction and relitigation in several states.[30] No better illustration of this problem exists than this very case where the Georgia courts utilized emergency jurisdiction provisions of the UCCJA to justify their jurisdiction to modify the custody decree when it was clear that the child was in no immediate danger at the time of the initiation of the proceedings in Georgia, that all the evidence concerning the alleged abandonment and inappropriate care of the child was in Florida, that Florida, rather than Georgia was clearly the child's home state and that, in fact proceedings in Florida had been initiated weeks prior to those in Georgia and concluded before any hearing on the merits in Georgia.

Finally, if no other state would have jurisdiction under the first three tests or if another state has declined to exercise jurisdiction in favor of another state court on the basis that it is a more appropriate forum, then that court may exercise jurisdiction if it determines it is in the best interest of the child.[31]

Thus, in this action, one looks to UCCJA (U.L.A.) §3 found at West's F.S.A. §61.1308(1) (a) (1) to determine

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[29]UCCJA, (U.L.A.) §3(a) (3) Commissioner's Note at 9 U.L.A. 108.

[30]Stern, "Stemming the Proliferation of Parental Kidnapping", *supra*.

[31]UCCJA, (U.L.A.) §3(a) (4), West's F.S.A. §61.1308(1)(d).

whether the Florida court had jurisdiction as the child's home state.[32]

The evidence clearly shows that Shane lived in the state of Florida with his mother, the Petitioner, from November, 1977 until February 17, 1979. (J.A.11). Proceedings were instituted in Florida to establish, enforce and modify the Georgia judgment less than three weeks after the minor child was taken to Georgia by his father. (J.A.39, 6-14). Therefore, there is no question that Florida had jurisdiction as the home state.

Petitioner further complied with all disclosures mandated by the UCCJA §9 and West's F.S.A. §61.1321, to supply the court with sufficient information upon which informed decisions could be made as to the exercise of jurisdiction. (J.A.11,12)

Petitioner and the Florida court strictly observed UCCJA guidelines for service on out of state residents adopted to provide reasonable notice and an opportunity to be heard to

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[32]For a discussion of Florida's enactment and interpretation of the UCCJA, see Kutun and Fox, "Closing the Custody Floodgate: Florida Adopts the Uniform Child Custody Jurisdiction Act," 6 Fla.State L.Rev. 408, 411-421 (1978).

parents and other interested parties.[33] The record shows that Respondent was personally delivered the Florida petition by a Georgia law enforcement officer (J.A.15,16), and such service was perfected 35 days prior to the hearing on the matter.[34]

Since the Florida courts complied with the jurisdiction and due process provisions of the UCCJA, Georgia, pursuant to the UCCJA provisions codified in Georgia at Ga. Code §74-514, is mandated to recognize and enforce the decree of the Florida courts.

Its failure to do so contravened not only the specific language of its own statute, but also recent case law in which

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[33]UCCJA. (U.L.A.) at §5, also at West's F.S.A. §61.1312 and Georgia Code §74-506 provides:

[Notice to Persons Outside this State: Submission to Jurisdiction]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service or process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court including publication, if other means of notification are ineffective.

(b) Notice under this section shall be served, mailed, or delivered, or last published at least [10, 20] days before any hearing in this State.

[34]To ameliorate any inconvenience and expense to the out of state party, the UCCJA also provides that the court may require the other party to pay to the non-resident, court travel and other necessary expenses. UCCJA, (U.L.A.) §11, also at West's F.S.A. §61-1324 and Ga. Code §74-512.

Georgia courts have been willing to recognize judgments of sister states even when such judgments have been rendered in accordance with procedures dissimilar to those adopted by Georgia courts as long as due process was afforded to the parties. *Whitaker v. Whitaker,* 237 Ga. 895, 230 S.E.2d. 486 (1976); *Yearta f/k/a Scroggins v. Scroggins,* 245 Ga. 831, 268 S.E.2d. 151 (1980).

In summary, full faith and credit should have been granted to the Florida decree since the Florida court had *in personam* jurisdiction over the Respondent pursuant to standards articulated by this court in *International Shoe Co. v. Washington, supra, Shaffer v. Heitner, supra*; *Kulko v. Superior Court, supra,* and the Uniform Child Custody Jurisdiction Act as embodied in Florida law.

D. The Decree of the Florida Court Was Res Judicata As To All Issues of Law and Fact Then Existing and was Thereby Entitled to Full Faith and Credit in Georgia

A major requirement for the according of full faith and credit to a judgment or decree is that it be a valid and final judgment or decree having a *res judicata* effect in the state of its rendition. As stated by this Court, "a judgment from the rendering state controls in other states to the same extent as it does in the state where rendered."[35]

In two of the four cases entertained by this Court in the last forty years involving the issue of whether full faith and credit should be given to a custody decree, this Court has not

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[35]*Riley v. New York Trust Co.,* 315 U.S. 343, 349, 62 Sup.Ct. 608, 612, 86 L.Ed. 885, 891 (1942).

directly reached this issue on the basis that the custody decrees in question did not have a conclusive effect in the rendering state.

The first case which this Court considered was *New York ex rel. Halvey v. Halvey,* 330 U.S. 610, S.Ct. 903, 91 L.Ed. 1133 (1937). In *Halvey,* the mother took the child from the family home in New York to Florida and after about a year filed suit there for divorce and custody. The father, served by publication, did not file an answer, but instead went to Florida and took the child back to New York the day before entry of a default decree in favor of the mother. When she sought enforcement of the Florida decree by filing a writ of habeas corpus in New York, the New York court modified the Florida decree by giving the father visitation rights and possession of the child during vacations.

This Court in reviewing Florida law found that at that time a Florida court had the power to modify a custody decree at all times even on the basis of facts which were not presented or considered at a former hearing.[36] As a result, the Court found that Florida custody decrees were ordinarily not *res judicata* either in Florida or elsewhere. Therefore, the majority opinion written by Mr. Justice Douglas held that, "So far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the decree, New York may do. . .[I]t is clear that the state of the forum has at least as much leeway to disregard the judgment, to qualify it or depart from it as does the state where it was rendered."[37]

In *Ford v. Ford,* 376 U.S. 197, 83 S.Ct. 273, 9 L.Ed.2d 240 (1962), this Court again looked at the law of the state

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[36]*Halvey, supra,* 330 U.S. at 612-613; 67 S.Ct. at 905.

[37]*Id.*, 330 U.S. at 614-615, 67 S.Ct. at 906.

rendering the decree and determined that the decree did not have a *res judicata* effect in the rendering state.

In *Ford, supra,* the husband filed a petition for writ of habeas corpus in Virginia seeking custody of his minor children in the physical custody of his wife. The wife answered and after negotiations the parties entered into an agreement providing that the husband was to have custody of the children during the school year and that the wife was to have custody during summer vacation and other holidays. Upon such agreement the Virginia court issued a "dismissed agreed" order. Nine months later while the children were visiting in South Carolina with their mother, the wife filed suit for full custody in the appropriate court there. The husband, still a Virginia resident, entered a general appearance to contest the issue. The trial court found for the wife awarding her custody. The South Carolina Supreme Court reversed the lower court on the basis that the "dismissed agreed" order was *res judicata,* and in the absence of allegation or proof of a change of circumstances, held it was entitled to full faith and credit in South Carolina.[38]

This Court, in a unanimous opinion written by Mr. Justice Black, found after reviewing Virginia law, that Virginia would not consider a "dismissed agreed" order to be *res judicata* in a child custody case[39] and, therefore, reversed the decision of the South Carolina Supreme Court granting the full faith and credit to the Virginia decree.

In the case now before this Court, there is no doubt that both Florida and Georgia recognize their custody decrees as *res judicata* as to all issues of law and fact decided. The

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[38]*Supra,* 371 U.S. at 188-190, 83 S.Ct. at 274-5.

[39]*Id.*, 371 U.S. at 192-193, 83 S.Ct. at 276.

UCCJA, adopted in both Florida and Georgia, specifically provides that a custody decree rendered by a court of a state which had jurisdiction under the UCCJA jurisdictional provisions binds all parties who have been served in the state or notified in accordance with the Act's provisions for notice to out of state contestants, and provided with an opportunity to be heard. The Act further states that: "As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until the determination is modified in accordance with the provisions of this Act."[40]

In addition to meeting jurisdictional requirements of the UCCJA, other statutory and case law in both states requires that a finding of material change in circumstances occurring since the decree must be made prior to a court's modification of a custody decree. Ga. Code Ann. §74-515, Ga. Code Ann. §30-127, *Bannister v. Bannister,* 240 Ga. 518, 241 S.Ed.2d 247 (1978); *Stricklin v. Stricklin,* 383 So.2d 1183 (Fla.App. 1980).

While Georgia has never recognized the authority of a court granting a custody decree to exercise continuing jurisdiction to modify, change or revoke the decree. *Thomas v. Thomas,* 221 Ga. 652, 146 S.E. 2d 724 (1966), *Barrentine v. Barrentine,* 210 Ga. 749, 82 S.Ed. 2d 857 (1945); Florida has since the 1978 adoption of the UCCJA, also rejected the concept of continuing jurisdiction in custody matters - its law at the time of *Halvey, supra,* and no longer recognizes a Florida court's right to modify custody on the basis of facts not presented or considered at the former hearing. *Hegler v. Hegler,* 383 So.2d 1134 (Fla.App. 1980).

In summary, unlike the *Halvey* and *Ford* custody decrees, the custody decree rendered by the Florida court in this case

[40]UCCJA, (U.L.A.) §12; West's FS.A. §61.1328; Ga. Code §74-513.

was, according to Florida law, *res judicata* as to all issues of law and fact decided and as to the custody determination made. There being no leeway in the Florida court to disregard, qualify or depart from the judgment except upon a finding of a material change in conditions since the decree, Georgia erred in failing to recognize and enforce the decree.

E. There Was No Change of Conditions or Supervening Events Between the Rendition of the Florida Decree and Georgia's Assumption of Jurisdiction Which Justified the Refusal of the Georgia Court to Extend Full Faith and Credit

This Court in *Kovacs v. Brewer,* 356 U.S. 604, 78 S.Ct. 963, 2 L.Ed.2d 1008 (1958) found another basis to avoid reaching the full faith and credit issue - that of changed circumstances.

In *Kovacs, supra,* the child had lived in North Carolina with its paternal grandparents for three years, pursuant to a valid New York custody decree, when the mother petitioned for modification in New York. After a hearing in which the father and grandfather entered a general appearance without objecting to jurisdiction, the court modified the decree to give the mother custody. The child, thereafter, was kept in North Carolina contrary to the decree. Fourteen months later the mother brought proceedings to enforce the New York modification judgment in North Carolina. The North Carolina courts, after apparently considering both subsequent and previously litigated events, decided that the child should remain with the grandparents.

In an opinion by Justice Black the Supreme Court held on the basis of *Halvey* that the state of the forum has as much leeway to disregard the judgment, to qualify it or to depart

from it as does the state rendering the original judgment. Since New York could modify the decree if changed circumstances called for a different arrangement to protect the child's health and welfare, North Carolina also could modify custody based on changed circumstances after the rendition of the New York decree. However, because the factual basis for the North Carolina judgment was unclear, the case was remanded to the North Carolina courts to determine the existence of changed circumstances.

As previously shown, Florida also permits modification of a custody decree on the basis of a material change in conditions since the prior decree, but unlike the facts in *Kovacs, supra,* there was barely a month between the hearing and order in the Florida court proceedings on April 18, 1979, (J.A.25,26) and the hearing in the Georgia proceedings on May 10, 1979 (J.A.22) (T.1). There was no change in conditions to justify the Georgia courts refusal to grant full faith and credit to the Florida decree. In fact, Respondent did not even introduce any evidence in the Georgia hearing which related to changed conditions occurring after the April Florida hearing, but rather dwelt upon events that had occurred months prior to the Florida hearing. (T.21-31).

Since Florida law does not permit modification of custody without a material change in conditions and since the only evidence presented by Respondent to show a change of conditions in the Georgia proceeding related to events occurring before to the Florida hearing, the findings of fact and conclusions of law in the Florida decree were *res judicata* and entitled to full faith and credit in the Georgia courts.

In summary, Neither *Halvey, supra, Ford, supra,* nor *Kovacs, supra,* offer an appropriate rationale for the denial

of the application of the Full Faith and Credit Clause to the Florida decree in this case. Current Florida law, incorporating the UCCJA, makes custody decrees conclusive and *res judicata* as to all issues of law and fact decided, and there were no changed circumstances after the rendering of the Florida decree to support a modification of the decree in either Florida or Georgia.

III.

EXTENDING FULL FAITH AND CREDIT TO CUSTODY DECREES WOULD PROMOTE ORDERLY INTERSTATE CUSTODY LITIGATION.

The Full Faith and Credit Clause gives state court judgments res judicata effect. *Durfee v. Duke,* 375 U.S. 106, 109, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963). Res judicata serves essential functions in the judicial system. It permits litigants to rely on judicial decisions, and prevents "vexatious litigation." *Brown v. Felsen,* 442 U.S. 127, 131, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979). As has been shown above, the degree to which states must accord full faith and credit to custody decrees has not been definitively determined by this Court. The primary reason for the special concern over custody cases is stated in Justice Frankfurter's dissenting opinion in *Kovacs v. Brewer, supra.*

> Because the child's welfare is the contr[illegible] guide in a custody determination, a custody decree is of an essentially transitory nature. The passage of even a relatively short period of time may work great changes, although difficult of ascertainment, in the needs of a developing child. . . . A court that is called upon to determine to whom and under what circumstances

> custody of an infant will be granted cannot, if it is to perform its functions responsibly, be bound by a prior decree of another court, irrespective of whether "changes in circumstances" are objectively provable.

Id., 356 U.S. at 612. There is little disagreement over the concept that custody decrees should not be immutable, either where rendered or elsewhere, because changes in circumstances may make it appropriate for a minor child to live with the parent not originally granted legal custody. But the paramount concern for ensuring that all custody decrees can be modified when necessary to protect minor children's interests has resulted in rules of law and practices that have had adverse consequences for both parents and children. Few custody cases involve one perfectly fit parent and one totally unfit parent. Most custody disputes could be resolved responsibly by awarding legal custody to either of the contestants. The absence of a full faith and credit mandate as to the circumstances existing at the time of a custody award means that the courts of a state can reweigh evidence considered by the courts of another state, and make contrary findings of fact and law based on that evidence. This is an invitation to the losing party in a custody dispute to seek another try at securing custody, by removing the minor children involved to another jurisdiction and filing a new custody case. The law review articles cited in this brief demonstrate that concern for the negative impact of the current status of custody awards on family life outweighs the legitimate desire to ensure that custody awards are made by courts exercising their discretion fully in determining what is best for minor children. Full faith and credit for custody decrees means only that the facts existing at the time a court makes a custody determination cannot be the basis for a contrary decision by the courts of another state. This case

presents this issue squarely. In April of 1979, a Florida court found that Petitioner's conduct and the home environment for her minor child during February of 1979 did not justify changing legal custody of the child to Respondent. In June of 1979, a Georgia court found that Petitioner's conduct and the child's home environment in Florida in February of 1979 justified changing legal custody to Respondent. This situation is directly contrary to the constitutional purpose of the Full Faith and Credit Clause, which is to require parties to litigation to honor valid court orders, and to limit them to one trial on a particular factual and legal issue. *Johnson v. Muelberger,* 340 U.S. 581, 585, 71 S.Ct. 474, 95 L.Ed. 552 (1951). While a state's interest in the welfare of minors within its boundaries is strong, Petitioner submits that current realities make it essential that local concerns give way so that custody adjudication can become a part of our federal system, with all the consistency and protection of the rights of parties that system provides. *Sherrer v. Sherrer,* 334 U.S. 343, 355, 68 S.Ct. 1087, 92 L.Ed. 1429 (1948). The Uniform Child Custody Jurisdiction Act will help in interstate custody determinations, but it cannot substitute for full faith and credit for decrees such as the one made by the Florida court in this case, because its provisions are subject to varying interpretations by the states enacting it. *See generally* 96 A.L.R.3d 968. Petitioner therefore contends that the interests of all parties to custody litigation, and of society as a whole, would be served by extending full faith and credit to custody decrees rendered by courts having jurisdiction over the parties and subject matter consistent with the due process requirements of *International Shoe, supra.*

CONCLUSION

For the foregoing reasons, the Petitioner urges this Court to reverse the decision of the Georgia Supreme Court.

Respectfully submitted,

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APPENDIX A

FLORIDA STATUTES

West's F.S.A. 61.1302 Short Title

Sections 61.1302-61.1348 may be known and shall be cited as the "Uniform Child Custody Jurisdiction Act."

Laws 1977, c. 77-133, §1, eff. Oct. 1, 1977.

West's F.S.A. 61.1304 Purpose of Act; Construction of Provisions

The general purposes of this act are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) Make uniform the law with respect to the subject of this act among states enacting it.

Laws 1977, c. 77-433, § 3, eff. October 1, 1977.

West's F.S.A. 61.1306 Definitions

As used in this act:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determintion contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent for at least 6 consecutive months or, in the case of a child less than 6

months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States; the Commonwealth of Puerto Rico; or the District of Columbia.

Laws 1977, c. 77-433, §3, eff. Oct. 1, 1977.

West's F.S.A. 61.1308 Jurisdiction

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state:

(1) Is the home state of the child at the time of commencement of the proceeding, or

(2) Had been the child's home state within 6 months before commencement of the proceedings and the child is absent from the state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(d)1. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), paragraph (b), or paragraph (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

2. It is in the best interest of the child that a court of this state assume jurisdiction.

(2) Except under paragraph (c) or paragraph (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

Laws 1977, c. 77-433, §4, eff. Oct. 1, 1977.

West's F.S.A. 81.131 Notice and Opportunity to be Heard

Before a decree is made under this act, reasonable notice and opportunity to be heard shall be given to the contestants,

any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to §61.1312.

Laws 1977, c. 77-433, §5, eff. Oct. 1, 1977.

West's F.S.A. 61.1312 Notice to Persons Outside this State: Submission to Jurisdiction

(1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(a) By personal delivery outside this state in the manner prescribed for service of process within the state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this action shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

Laws 1977, c. 77-433, §6, eff. Oct. 1, 1977.

West's F.S.A. 61.132 Information Under Oath to be Submitted to the Court

(1) Every party in a custody proceeding, in his first pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(a) He has participated as a party or witness or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

(b) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Laws 1977, c. 77-433, § 10, eff. Oct. 1, 1977.

West's F.S.A. 61.1324 Appearance of Parties and the Child

. . .(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

Laws 1977, c. 77-433, §12, eff. Oct. 1, 1977.

West's F.S.A. 61.1326 Binding Force and Res Judicata Effect of Custody Decrees

A custody decree rendered by a court of this state which has jurisdiction under s. 61.1308 binds all parties who have been served in this state or notified in accordance with s. 61.1312 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

Laws 1977. c. 77-433, §13, eff. Oct. 1, 1977.

West's F.S.A. 61.1328 Recognition of Out-of-State Custody Decrees

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which decree was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not

been modified in accordance with jurisdictional standads substantially similar to those of this act.

Laws 1977, c. 77-433, § 14, eff. Oct. 1, 1977.

APPENDIX B

GEORGIA STATUTES

CHAPTER 74-5. UNIFORM CHILD CUSTODY JURISDICTION ACT

Ga. Code §74-501 Short Title

This Chapter shall be known and may be cited as the "Uniform Child Custody Jurisdiction Act."

(Acts 1978, pp. 258, 259, eff. Jan. 1, 1979.)

Ga. Code §74-502 Purpose of Chapter; Construction

The general purposes of this Chapter are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on children's well-being.

(2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in the State which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the State with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and to also assure that courts of this State decline the exercise of jurisdiction when the child and his family have a closer connection with another State.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid unnecessary relitigation of custody decisions of other States in this State.

(7) Facilitate the enforcement of custody decrees of other States.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this State and those of other States concerned with the same child.

(9) Make uniform the law of those States which enact the Uniform Child Custody Jurisdiction Act.

(b) This Chapter shall be construed to promote the general purposes stated in this section.

(Acts 1978, pp. 258, 259, eff. Jan. 1, 1979.)

Ga. Code §74-503 Definitions

As used in this Chapter: . . .

(a) "Contestant" means a person (including, but not limited to, a parent) who claims a right to custody or visitation rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including, but not limited to, visitation rights. "Custody determination" does not include a decision relating to child support or any other monetary obligation of any person.

(c) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(d) "Decree" or "custody decree" means a custody determintion contained in a judicial decree or order made in a custody proceeding, and includes, but is not limited to, an initial decree and a modification decree.

(e) "Home state" means the state in which the child immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent for at least six consecutive months and, in the case of a child less than six months old, the State in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(f) "Initial decree" means the first custody decree concerning a particular child.

(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(h) "Physical custody" means actual possession and control of a child.

(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(j) "State" means any State, territory, or possession of the United States; the Commonwealth of Puerto Rico; and the District of Columbia.

Acts 1978, pp. 258, 260, eff. Jan. 1, 1979.)

Ga. Code §74-504 Jurisdiction to Make Child Custody Determination

(a1) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This State (A) is the home State of the child at the time of commencement of the proceeding, or (B) had been the child's home State within six months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) It is in the best interest of the child that a court of this State assume jurisdiction because (A) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (B) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(4)(A) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another State has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (B) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(Acts 1978, pp. 258, 262, eff. Jan. 1, 1979.)

Ga. Code §74-505 Notice and Opportunity to be Heard

Before making a decree under this Chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 74-506.

(Acts 1978, pp. 258, 263, eff. Jan. 1, 1979.)

Ga. Code § 74-506 Notice to Persons Outside this State: Submission to Jurisdiction

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be made:

(a) By personal delivery outside this State in the manner prescribed for service of process within this State.

(2) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) By any form of mail addressed to the person to be served and requesting a receipt.

(4) As directed by the court including, but not limited to, publication, if other means of notification are ineffective.

(b) Notice under this action shall be served, mailed, delivered, or last published at least 30 days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the

place in which the service is made. If service is made by mail, proof may be a receipt signed by the person to whom the service is addressed or other evidence of delivery to the person to whom the service is addressed.

(d) Notice is not required if a person submits to the jurisdiction of the court.

(Acts 1978, pp. 258, 263, eff. Jan. 1, 1979.)

Ga. Code §74-150 Information Under Oath to be Submitted to the Court

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) He has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the same child in this or any other State.

(2) He has information of any custody proceeding concerning the child pending in a court of this or any other State.

(3) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court

of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

(Acts 1978, pp. 258, 267, eff. Jan. 1, 1979.)

Ga. Code §74-512(c) Appearance of Parties and the Child

(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child, the court may order that the notice given under section 74-506 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

(Acts 1978, pp. 258, 268, eff. Jan. 1, 1979.)

Ga. Code §74-513 Binding Force and Res Judicata Effect of Custody Decree

A custody decree rendered by a court of this State which had jurisdiction under section 74-504 binds all parties who have been served in this State or notified in accordance with

section 74-506 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law including, but not limited to, the provisions of this Chapter.

(Acts 1978, pp. 258, 269, eff. Jan. 1, 1979.)

Ga. Code §74-514 Recognition of Out-of-State Custody Decrees

The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Chapter or which was made under factual circumstances meeting the jurisdictional standards of the Chapter, so long as this decree has not been modified in accordance with jurisdictional standards substanttially similar to those of this Chapter.

(Acts 1978, pp. 258, 269, eff. Jan. 1, 1979.)

No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

v.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

QUESTION PRESENTED

Respondent feels that the writ of certiorari was improvidently granted in this case. See p. 7 - 11, *infra.* Assuming, however, that the Court reaches the merits of this controversy, we feel that Petitioner's framing of the question presented is inadequate in that it fails to note that the Uniform Child Custody Jurisdiction Act is a comity based Act and that the *original* decree which Petitioner sought to enforce in Georgia was, in fact, a *Georgia* judgment. Respondent would pose the question as follows:

Does Article IV, Section 1 of the Constitution of the United States require Georgia, a state which has adopted the comity based Uniform Child Custody Jurisdiction Act, as part of a proceeding in Georgia to modify its own custody decree, to give full faith and credit to a Florida decree which is based upon the prior Georgia judgment?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 4

ARGUMENT:

I. THE WRIT OF CERTIORARI IN THIS CASE HAS BEEN IMPROVIDENTLY GRANTED SINCE THE RECORD DOES NOT PRESENT THE QUESTION IN A MANNER WHICH IS APPROPRIATE FOR DECISION BY THIS COURT 8

II. UNDER THIS COURT'S PRIOR DECISIONS, GEORGIA WAS NOT REQUIRED TO GIVE FULL FAITH AND CREDIT TO A CHILD CUSTODY DECREE OF THE STATE OF FLORIDA ISSUED PURSUANT TO AN ACT WHICH HAS EXTRATERRITORIAL EFFECT ONLY ON THE BASIS OF COMITY AND WHICH DECREE WAS FOUNDED UPON A PRIOR JUDGMENT OF A GEORGIA COURT 13

III. UNDER THE LAW OF FLORIDA AND GEORGIA, CHILD CUSTODY DECREES DO NOT HAVE THE REQUISITE FINALITY TO REQUIRE THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE 29

IV. FLORIDA LACKED JURISDICTION OF THE CUSTODY ISSUE BECAUSE THE CIRCUIT COURT OF ALACHUA COUNTY DID NOT FOLLOW THE PROVISIONS OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT (U.C.C.J.A.) WHICH NOW RULE JURISDICTION OVER CHILD CUSTODY CASES IN BOTH FLORIDA AND GEORGIA 31

V. CONCLUSION 43

TABLE OF AUTHORITIES

Cases

Barber v. Barber,
323 U.S. 77, 89 L.Ed. 82 (1944) 15,18

Belford v. Belford,
32 So. 2d 312, 313 (1947) 30

Bennett v. Bennett,
73 So. 2d 274, 278 (1954) 30

Durfee v. Duke,
375 U.S. 106, 11 L. Ed. 186, 84 S. Ct. 242 (1963) 7,18,43

Estin v. Estin,
334 U.S. 541, 92 L. Ed. 1561, 68 S. Ct. 1213 (1948) 22,26

Ford v. Ford,
372 U.S. 197, 83 S. Ct. 273, 9 L.Ed. 2d 240 (1962) 15,19,20

Goldfarb v. Goldfarb,
246 Ga. 24, 28 (1980) 27,28

Halvey v. Halvey,
330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947) ..... *Passim*

Hanson v. Denckla,
357 U.S. at 252, 2 L.Ed. 2d 1238, 78 S. Ct. 1228 25

Hegler v. Hegler,
383 So. 2d 1134 (1980) 41

Hofer v. Agner,
373 So. 2d 48 (1979) 37

International Shoe Company v. The State of Washington,
326 U.S. 310 (1945) 24

Kovacs v. Brewer,
356 U.S. 604, 78 S. Ct. 963, 2 L.Ed. 1008 (1958) *Passim*

Kulko v. California,
436 U.S. 84, 56 L.Ed. 2d 132, 98 S. Ct. 1690 (1978) ..... *Passim*

Matthews v. Matthews,
238 Ga. 201 (1977) 5,10,36

May v. Anderson,
345 U.S. 528, 73 S. Ct. 840, 97 L.Ed. 1221 (1953) ..... *Passim*

Patterson v. Patterson,
214 So. 2d 381 (1968) 30

Pennoyer v. Neff,
95 U.S. 714, 24 L.Ed. 565 (1878) 23,24

Reid v. Adams,
241 Ga. 521 (1978) 5,10

Robinson v. Ashmore,
232 Ga. 498 (1974) 29

Roehl v. O'Keefe,
243 Ga. 696, N. 5 (1979) 21

Rush v. Savchuk,
62 L.Ed. 2d 516, 100 S. Ct. 571 (1980)..... 24

Sampsell v. Superior Court,
1971 P.2d 739 (1948)..... 32

Sanders v. Sanders,
376 So. 2d 880, 882 (1979)..... 29

Shaffer v. Heitner,
433 U.S. 186, 53 L.Ed. 2d 683, 97 S. Ct. 2569
(1977).....23,24,26

Sistare v. Sistare,
218 U.S. 1, 54, L.Ed. 905, 30 S. Ct. 682
(1909).....14,18

Stricklen v. Stricklen,
383 So. 2d 1183, 1184 (1980) 29

Trujillo v. Trujillo,
378 So. 2d 812 (1980) 41

Webb v. Webb,
245 Ga. 650 (1980)..... 3,10,11,28,37

World-Wide Volkswagen v. Woodson,
62 L.Ed. 2d 490, 100 S. Ct. 539 (1980)..... 24,26

Yearta v. Scroggins,
245 Ga. 831 (1980)..... *Passim*

Statutes

Fla. Stat. Ann. § § 61.1302 - .1348 (West)..... *Passim*

Ga. Code Ann. § 24-4545..... 9

Ga. Code Ann. § 30-127..... 29

Ga. Code Ann. § § 74-501 to 525..... *Passim*

Parental Kidnapping Prevention Act of 1980,
28 U.S.C. § § 1739A.....6,12,21

Secondary Sources

Bates and Holmes, "The Uniform Child Custody Jurisdiction Act: Progress and Pitfalls", Ga. B. J. 72 (1980) 27,3,8,39,40,42,43

BLACK'S LAW DICTIONARY, 334 (1957) 26

Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws", 22 Vand. L. R. 1207, 1218-19 (1969) 33

Clark, *The Law of Domestic Relations* (1968) 35

Ratner, "Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act", 38 S. Cal. L. Rev. 183, 193 (1965) 32,33

RESTATEMENT (SECOND) CONFLICT OF LAWS § 79 (1971) 32

9 U.L.A. Child Custody Jurisdiction 111-70, § § 1-28 (1979) ..... *Passim*

STATEMENT OF THE CASE

The Petitioner's statement of the case is substantially accurate insofar as it goes. Some supplementation is necessary, however, to ensure that the Court's attention is directed to all relevant factors which are necessary to a proper consideration of the question presented for review.

To begin with, it should be noted that, while there is a full transcript of the hearing held in the Georgia proceeding, there is no record of any evidence having been taken in the Florida case except for a bare recital to that effect in the two orders passed by the Florida Circuit Judge.[1] (J.A. 17, 25) An affidavit submitted by Petitioner contains only information routinely required by Section 61.132 of Florida's Uniform Act. (J.A. 11) The only part of this affidavit which is pertinent to the questions before this Court is the portion which informed the Florida court that: (1) There had been prior litigation over the minor Shane S. Webb in Georgia in 1977 and (2) There was probably pending litigation over Shane S. Webb at that very moment. (J.A. 11-12)

The Georgia court found that the respondent had retrieved his child from Florida in the face of an emergency and that under the appropriate provision of the Georgia Uniform Child Custody Jurisdiction Act,[2] Georgia was vested with

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[1]This may be a material point as it apparently was in *Halvey v. Halvey,* 330 U.S. 610, 67 S.Ct. 903, 91 L.Ed. 1133 (1947); see also, Footnote 3, *infra.*

[2]Ga. Code Ann. Section 74-504(2)(3). The Uniform Act became effective in Georgia on January 1, 1979, and in Florida on October 1, 1977. See 9 Uniform Laws Annotated, p. 111 (1979). The original custody decree was rendered by the Superior Court of Berrien County, Georgia on September 22, 1977.

jurisdiction over a proceeding to modify its original custody decree. There is a little bit more to the factual basis for this finding than is suggested by Petitioner's statement of the case. A sample of the evidence available to the Georgia trier of fact follows:

Shane Scott Webb, the child at the center of this controversy, is six years old. (J.A. 20) His mother, the Petitioner, was granted custody under the 1977 Georgia judgment, and with this privilege went the corollary duties which are always present when a parent is charged with the responsibility of caring for a small child.

On February 17, 1979, the Respondent, a Nashville, Georgia, policeman, received a Telex message from the Florida authorities concerning his son. (T. 21-22) Acting upon the advice of the Alachua County, Florida, division of Family Services, he immediately traveled to Gainesville, Florida and contacted the Sheriff's Department. (T. 22-23) Respondent then went to Petitioner's residence and talked with the neighbors. He took possession of his child and, following a conversation with a juvenile officer of Alachua County, left his address with the authorities and brought Shane back to Georgia. (T. 124)

At the time Respondent arrived at Petitioner's residence in Florida, Shane had been taken next door to the neighbor's house. (T. 25) Petitioner was not at home and never came home while Respondent was there with Shane. (T. 25) It was later learned that Petitioner had gone to Miami, Florida, for the week-end and had left Shane in Petitioner's home in the custody of a 12-year-old half-sister. (T. 26) The circumstances requiring Petitioner to leave her small son in the care of a 12-year-old girl and travel to Miami for the week-end are not in the record since Petitioner, through her attorney, declined to answer a question requesting that information. (T. 105)

Petitioner recites in her statement of the case that "Respondent filed an action for custody in the Superior Court of Berrien County, Georgia." It should be emphasized that Respondent's action was not a first instance custody suit, but was a complaint seeking to have the September 22, 1977, Georgia custody decree modified *by the very court which had issued it originally*. (J.A. 20-21) The material "change of circumstances" time frame was from September 22, 1977, (the date of the original decree in Georgia) until March 23, 1979, (the date of the Georgia complaint). (J.A. 20-24)

At the time Georgia issued its custody decree on June 21, 1979, the Court had before it and subject to its jurisdiction, both parents and the child. Personal jurisdiction of Petitioner was accomplished by her Answer and general appearance. (J.A. 29, T. 3)

The statement of the case of Petitioner asserts that the full faith and credit issue was preserved in her enumerations of error before the Georgia Supreme Court. In neither her Answer (J.A. 34) nor her enumerations of error No. VI (See Appellant's brief, Supreme Court of Georgia) does Petitioner specifically invoke Article IV, Section 1 of the United States Constitution. In the argument portion of her brief in the Georgia Supreme Court, she devotes one line to this issue at page 20: "In such circumstances, Appellant asserts, the decree entered in Florida should have been recognized as a final order subject to full faith and credit." Only in her petition for writ of certiorari to this Court does Petitioner finally set out Article IV, Section 1 of the United States Constitution as the basis for her contention. She asserts further that "Georgia declined to specifically rule on the full faith and credit question presented." (Petitioner's brief, p. 8) In fact, the court in *Webb v. Webb,* 245 Ga. 650

(1980), never mentioned full faith and credit or even hinted that it had been considered by the Justices. This is not at all surprising since the full faith and credit issue was never focused by Petitioner in her appeal to the Supreme Court of Georgia. In her motion for rehearing to that court Petitioner failed to even mention full faith and credit or to remind the court that this point had been overlooked. (See Appellant's Motion for Rehearing, Supreme Court of Georgia.) It is obvious that the full faith and credit clause of the United States Constitution was never considered by the Georgia court since Petitioner never really argued the point in that forum.[3]

SUMMARY OF ARGUMENT

A careful review of the record in this case reveals that the writ of certiorari has been improvidently granted.

In *Halvey v. Halvey,* 330 U.S. 610, 67 S. Ct. 903, 91 L.Ed. 1133 (1947), this Court decided the child custody full faith and credit issue on the basis of "a failure of proof that the Florida decree received less credit in New York than it had in Florida." 330 U.S. at 615. The present record presents the same problem - a total absence of a transcript to show what, if any, evidence the Florida court heard in support of its decree. Finality of the Florida decree is an important issue in this case if the Court reaches the merits of

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[3]Rule 45 of the Supreme Court of Georgia states that "any" enumerated error which is not supported by argument or citation of authority shall be deemed abandoned." Georgia Code Ann. Section 24-4545. This and various other points are material to the question of whether certiorari has been improvidently granted in this case. See, Footnote 1, *supra* and p. 7-11, *infra.*

the full faith and credit question raised by Petitioner. In the absence of a transcript or some credible proof of the evidence heard by the Florida court, it will be impossible to deal with the issue of finality of the Florida decree. There is no way for this Court to deal with an argument asking that Georgia be foreclosed from hearing evidence which Florida heard, when there is no way to determine what evidence the Florida court had before it.

It also appears that since Petitioner did not properly raise and argue the full faith and credit issue in the court below, that issue was treated as abandoned under Georgia Supreme Court Rule 45, Ga. Code Ann. Section 24-4545. This explains why the Georgia Supreme Court's opinion makes no mention of full faith and credit. Having been improperly raised in the Georgia courts, this issue should not be entertained by this Court.

Of substantial significance is the fact that the Florida decree is in reality a Georgia decree in disguise. The Florida court merely recognized the previous Georgia judgment under the U.C.C.J.A. and Petitioner then sought to enforce that judgment in Georgia. The Georgia court is, in effect, being asked to give full faith and credit to its *own* judgment, a novel approach to say the least. No authority has been cited so far requiring such a result.

This is not a true child snatching case. Respondent went to Florida for his child at the urging of the Florida authorities and with their full knowledge and consent. The child was returned to Georgia, the state where the original custody decree was rendered. Georgia, by its decisions in *Matthews v. Matthews,* 238 Ga. 201 (1977); *Reid v. Adams,* 241 Ga. 521, and *Yearta v. Scroggins,* 245 Ga. 831 (1980), has been, and still is, on record as condemning child-snatching. The opinion below was based on comity and policy con-

siderations, as well as a state law construction of the U.C.C.J.A. These adequate non-federal grounds are sufficient for this Court to refuse to review the full faith and credit issue, particularly where the law of Georgia so clearly adds no fuel to the child-snatching dilemma.

The new "Parental Kidnapping Prevention Act of 1980" is designed to bring stability into the area of interstate enforcement of custody decrees. This federal Act will give rise to a body of law, supervised by this Court, which will control, regulate and enforce the proceedings which now trigger child-snatching. The precise issue in our case will probably never come up again, and there is, accordingly, no compelling reason for this Court to deal with it at the present time.

Florida's decree does not have the requisite finality to be entitled to full faith and credit even if this Court were to hold that Article IV, Section 1 of the Constitution does apply to child custody decrees. Under Florida law the Florida decree was subject to prospective modification as to facts not before the court at the time of the decree. In the absence of a transcript of the Florida proceedings, the finality question cannot even be intelligently discussed.

Furthermore, the U.C.C.J.A. is a comity based Act to which full faith and credit should, by very definition, have no application. The Act was designed to be enforced by cooperation among the adopting states, not by a mandatory Constitutional concept such as full faith and credit. This Court has never held that full faith and credit applies to the typical child custody decree, much less a decree issued pursuant to a comity based Act. Such an application has no theoretical basis to support it.

In addition, Petitioner filed her petition and the Circuit Court of Alachua County, Florida, issued its judgment

pursuant to the U.C.C.J.A. Florida had adopted the Act and was subject to its jurisdictional rules. However, Florida did not follow Sections 14 and 15 of the Act; therefore, Florida did not have jurisdiction of the matter. Under section 15 Florida was authorized to recognize and enforce the original Georgia decree. This section could not, under the correct interpretation of the U.C.C.J.A., confer jurisdiction upon the Florida court. Further, the Florida court improperly modified Georgia's original decree without jurisdiction under section 14 of the U.C.C.J.A. Section 14 directed Florida to determine whether or not Georgia retained jurisdiction under the Act; if it did, the Florida court was to defer to the Georgia court. Georgia need not give full faith and credit to a judgment made without jurisdiction of the subject matter or the person. *Durfee v. Duke,* 375 U.S. 106. Since no issue was made of jurisdiction in the Florida court, the Georgia court could consider the validity of Florida's jurisdiction. Therefore, the Georgia court could have properly denied full faith and credit to the Florida court's final judgment.

Finally, Petitioner's argument on personal jurisdiction is totally without merit. *May v. Anderson,* 345 U.S. 528, 73 S. Ct. 840, 97 L.Ed. 1221 (1953), absolutely prevented the Florida court from exercising personal jurisdiction over Respondent. Under this Court's recent decisions, such as *Kulko v. California,* 436 U.S. 84, 56 L.Ed.2d 132, 98 S. Ct. 1690 (1978), dealing with the assertion of personal jurisdiction by a state over a non-resident, there is no basis for what Florida attempted to do. The isolated trip of Respondent to Florida in relation to his family problem in no way subjected him to an assertion of power by Florida. Furthermore, personal jurisdiction in the due process sense has no application to a comity based Act such as the

U.C.C.J.A. which does not contemplate any enforcement authority for its judgments other than cooperation by other adopting states.

The decision of the Georgia Supreme Court should be affirmed.

ARGUMENT

I.

THE WRIT OF CERTIORARI IN THIS CASE HAS BEEN IMPROVIDENTY GRANTED SINCE THE RECORD DOES NOT PRESENT THE QUESTION IN A MANNER WHICH IS APPROPRIATE FOR DECISION BY THIS COURT.

Without unduly belaboring this point, Respondent is of the opinion that the present case is a poor vehicle for this Court to use to decide the important and complex Constitutional law question presented for review. Some of the factors which we believe should be considered on this threshold question are more fully discussed in Respondent's argument on the merits, *infra.* All of these considerations, however, are noted at this juncture so that the multitude of problems with the record can be seen individually and collectively.

As noted in our statement of the case, there is apparently no transcript of the Florida proceeding. It is thus impossible to know what, if any, evidence the Florida trial court heard to support its decree. This situation bothered the Court in *Halvey v. Halvey,* 330 U.S. 610, 67 S. Ct. 903, 91 L.Ed. 1133 (1947), where the evidence in the Florida proceeding was not in the record. The Court accordingly bypassed the

full faith and credit issue and decided the case on what was basically "a failure of proof that the Florida decree received less credit in New York that it had in Florida". 330 U.S. 615. The same problem exists here and militates against a consideration of the merits of the question presented.

Also, as noted in our statement of the case, the full faith and credit Constitutional question was never properly raised and argued by the Petitioner until the petition for certiorari was filed with this Court. The Georgia Supreme Court never mentioned it in their opinion and obviously treated that enumeration of error as having been abandoned under Rule 45 of that Court. Ga. Code Ann. Section 24-4545. In petitioner's motion for rehearing, full faith and credit was never mentioned even though the office of such a motion is usually to call the attention of a court to an issue or authority which has been overlooked. Since the issue of full faith and credit was not properly raised or considered in the court below, this Court should decline to deal with it at this time.

The *initial* decree dealing with custody of Shane Webb was issued by the *Georgia* court on September 22, 1977. (J.A. 2) It was this Georgia judgment which the Florida court merely adopted, (J.A. 25-26) and which petitioner sought to enforce against Respondent in the very same court in Georgia which issued it. In essence, the Georgia court was asked to apply the full faith and credit clause of the United States Constitution to its *own judgment* and to surrender the right to modify that judgment in a proceeding which was already pending when the Florida decree was rendered. It is difficult to see a precise and crisp full faith and credit issue emerging from a factual situation such as this one where the judgment sought to be given full faith and credit is actually one handed down by the forum state. This consideration is dealt with more fully, *infra,* and it is sufficient at this time to

say that the full faith and credit issue is certainly further obscured and emasculated by this factor.

In its amicus brief, the National Conference of Commissioners on Uniform State Laws points out that this is not a child-snatching case. We agree with them. If Respondent kidnapped his child, the record shows that the Florida authorities aided and abetted him in doing it. (See statement of the case, p. 2, *supra*).

No attempt has been made to avoid the jurisdiction of the state issuing the original custody decree dealing with this child; namely, Georgia. In this connection it is noteworthy that the Georgia Supreme Court was on record as condemnin child-snatching even before the U.C.C.J.A. was adopted in Georgia. See *Matthews v. Matthews,* 238 Ga. 201 (1977);[4] *Reid v. Adams,* 241 Ga. 521 (1978). In the recent case of *Yearta v. Scroggins,* 245 Ga. 831 (1980), Georgia enforced under the UCCJA a Missouri judgment which had been entered without personal jurisdiction of the Georgia mother and compelled her to return the children she was wrongfully detaining. The Court based its decision upon comity and enforced the judgment even though there was "no personal jurisdiction that would satisfy the full faith and credit clause of our federal Constitution". 245 Ga. 832. In a footnote, the court pointed out that the instant case, *Webb v. Webb,* was "limited to its facts" because of the extreme emergency which existed when the Florida authorities contacted Respondent. 245 Ga. 833, footnote 3.

A reading of the *Matthews, Reid* and *Yearta* opinions

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[4]The *Matthews* court found "as a matter of public policy that a noncustodial parent should not be able to entice the custodial parent into his jurisdiction for purposes of relitigating questions of custody." 238 Ga. at 201.

makes it abundantly clear that Georgia decisions do not encourage child-snatching by non-custodial parents. This case, *Webb v. Webb,* was decided under the UCCJA on the basis of comity.[5] Full faith and credit under the federal constitution played no part in it because there was a non-federal ground available as a basis for the decision. If this ground is found to be an adequate basis for the Georgia court's decision, then Petitioner's full faith and credit issue should not be considered in the present proceeding. If *Matthews* and *Reid, supra* reveal an anti-child snatching policy on the part of Georgia and if *Webb v. Webb* was decided on a non-federal ground (comity and policy considerations), as well as being limited to its facts by *Yearta,* there exists no compelling reason for this Court to be concerned about the impact of this case on child custody decree litigation between the several states. *Webb* was an isolated decision,[6] decided on the basis of state law comity. It has been limited to its facts by the court which decided it and should be left in its present condition.

Another point which weighs heavily against the wisdom of reviewing the full faith and credit issue raised by this case is the fact that Florida has obviously misinterpreted and misapplied the plain language of the U.C.C.J.A. while in the process of issuing its decree. See, *infra,* p. 26 - 36. The full faith and credit issue should not be decided on the basis of such an incorrect statutory interpretation.

Finally, the reasons for reviewing this case are now less compelling than ever since passage by Congress of the

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[5]More will be said about the significance of this factor, *infra,* p. 23.

[6]Present court-appointed counsel have been advised by prior counsel for the Respondent that Shane Webb is presently in Florida in the care and custody of Petitioner's mother.

"Parental Kidnapping Prevention Act of 1980."[7] This Act contains many of the same provisions found in the UCCJA and is obviously based largely upon the language of that Act. The primary difference is that the federal act is not based upon comity, but requires orders issued thereunder to be given full faith and credit in the federal Constitutional sense. Of course, no one can assess the full impact of this new Act at such an early stage of its existence. However, we can foresee with certainty that a body of federal decisional law will immediately begin to form around it. The precise issue in our case will probably never arise again since comity will no longer serve as the basis for determining child custody issues between the various states. In the face of this new Act, there is really no good reason why this Court should decide the full faith and credit issue which the petitioner urges upon it.

The writ of certiorari should be dismissed as having been improvidently granted.

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[7]We have been advised that the President signed this Act into law during December, 1980. It is designed to implement the full faith and credit clause and is to be found at 28 U.S.C. Section 1738A.

II.

UNDER THIS COURT'S PRIOR DECISIONS, GEORGIA WAS NOT REQUIRED TO GIVE FULL FAITH AND CREDIT TO A CHILD CUSTODY DECREE OF THE STATE OF FLORIDA ISSUED PURSUANT TO AN ACT WHICH HAS EXTRATERRITORIAL EFFECT ONLY ON THE BASIS OF COMITY AND WHICH DECREE WAS FOUNDED UPON A PRIOR JUDGMENT OF A GEORGIA COURT.

Petitioner urges this Court to take several giant steps in the full faith and credit area. First, the Court is asked to apply the full faith and credit clause of the United States Constitution to child custody decrees—something which this Court has so far declined to do. Secondly, the Court is asked to apply this Constitutional provision to a judgment issued under a comity based Uniform Act—a proposition which is theoretically suspect. Finally, petitioner asks that Georgia be required to give full faith and credit to what is in reality its own decree. The prior decisions of this Court do not support Petitioner's efforts in the context of the present case.

In the brief filed by petitioner and various amici, the previous decisions of this Court dealing with full faith and credit in the area of child custody decrees have been alluded to as confusing and conflicting. Respondent submits that, while these decisions may not have brought stability to the area of enforcement of interstate child custody decrees, they are neither confusing nor conflicting, and they were decided on the basis of sound reasoning and analysis of the type that must be applied to the case *sub judice.* Stemming the tide of child snatching, an end desired by all of us, should not be accomplished by just any means at hand to the exclusion of

sound legal doctrine and principles. The result sought by Petitioner through the medium of the present case would require the Court to abandon the analytical approach it has taken in this area over several decades.

It appears that this Court has dealt with some aspect[8] of the full faith and credit child custody question on four prior occasions. There is nothing in these four[9] decisions to cause optimism on the part of Petitioner. They are replete, however, with considerations which support the position taken by Respondent in this Court.

An application of *Halvey* alone to the facts presented in this record reveals the untenable position of Petitioner. The pertinent facts of that case are very close to ours.

The forum state in *Halvey* was New York, where the parents had been married and the child in question had been born. After marital difficulties arose, the wife went to Florida with the child and brought a proceeding for divorce and custody. Mr. Halvey was not personally served and made no appearance in the Florida proceeding. Prior to the Florida decree granting Mrs. Halvey a divorce and custody of the child, Mr. Halvey took physical possession of his son and returned him to New York. Mrs. Halvey then came to New York and, on the basis of the Florida judgment, sought

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[8]Because of the analytical approach which the Court has traditionally taken to this issue, a number of other decisions actually dealt with some of the same considerations faced in the child custody cases. See *e.g., Sistare v. Sistare,* 218 U.S. 1, 54 L.Ed. 905, 30 S. Ct. 682 (1909); *Estin v. Estin,* 334 U.S. 541, 92 L.Ed. 1561, 68 S. Ct. 1213 (1948).

[9]*Halvey v. Halvey,* 330 U.S. 610, 67 S. Ct. 903, 91 L.Ed. 1133 (1947); *May v. Anderson,* 345 U.S. 528, 73 S. Ct. 840, 97 L.Ed. 1221 (1953); *Kovacs v. Brewer,* 356 U.S. 604, 78 S. Ct. 963, 2 L.Ed. 1008 (1958); *Ford v. Ford,* 376 U.S. 197, 83 S. Ct. 273, 9 L.Ed.2d 240 (1962).

the return of her child in a habeas corpus proceeding. A full hearing was held, and New York substantially modified the Florida custody award. At the time the New York court ruled, it had jurisdiction over both parents, and the child was present within the forum state.[10]

When *Halvey* reached this Court, the inquiry centered on the question of the finality to be given the decree in the rendering state—Florida.[11] The Florida law was viewed as treating the decree as final in the res judicata sense only as to facts before the court at time of judgment. *Since there was no record of the evidence heared by the Florida court,* there was no way for this Court in *Halvey* to determine what was final and what was not. "There [was], therefore, a failure of proof that the Florida decree received less credit in New York than it had in Florida." 330 U.S. 615, 91 L.Ed. at 1136. Since Florida had remained free to modify the decree, the New York court was entitled to the same latitude. "So far as the full faith and credit clause is concerned, what Florida could do in modifying the decree, New York may do." 330 U.S. 614, 91 L.Ed. 1136. New York's modifying decree was, accordingly, affirmed.

Halvey specifically identified itself as a "narrow ground" decision and found it unnecessary to deal with the precise full faith and credit issue presented by the certiorari petition.

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[10]These factors were duly noted in the *Halvey* opinion, 330 U.S. 615, 91 L.Ed. 1136, and are Constitutionally significant in evaluating the action taken by a court dealing with full faith and credit and a custody decree, whether it is the forum court or the court issuing the original decree.

[11]This issue was also central to the decisions in *Kovacs* and *Ford, supra,* Note 9, as well as other cases of this court dealing with full faith and credit in connection with decrees which are potentially subject to future revision. See, *e.g., Sistare v. Sistare, supra,* note 8; *Barber v. Barbe,* 323 U.S. 77, 89 L.Ed. 82 (1944).

In the instant case, the factual considerations weigh even more heavily in favor of sustaining the action of the forum state.

Georgia was the state of residence of both Mr. and Mrs. Webb at the time of divorce and the state where the child in question lived. Both parents were before the Georgia trial court and subject to its jurisdiction. The child was present within the state and was within the physical possession of the father.

In addition to these important facts, Georgia has one significant connection with the parties and the child which was not present in *Halvey*—the original divorce and custody decree was issued by the same trial court (in Georgia) which was the forum court in this case. (J.A. 2) The proceeding in Florida was on the basis of this georgia decree (J.A. 6, 25-26), and there is no record of what, if any, evidence was heard by the Florida court.

On this set of facts there was no basis for the Georgia Supreme Court to feel *compelled* by Article IV, Section 1 of the United States Constitution to give full faith and credit to the Florida decree.[12]

In the first place, the absence of a transcript of the evidence makes it impossible to adequately deal with the "finality" determination which is part and parcel of any full faith and credit question. We do not know what the Florida court heard in the way of evidence other than the fact that Respondent had removed his son to Georgia. The Georgia court placed great weight on the fact that Petitioner had left

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[12]As noted, *supra,* p. 3-4, 8, the full faith and credit issue was never properly raised in the court below. Since the Georgia Supreme Court never passed on the question, we must make our argument on the merits on the basis of what that court would have been Constitutionally required to do had the issue been adequately presented to it.

the child without adult supervision while she was away on some kind of a social week-end. It is doubtful that the "Miami trip", or any other facts which were uncomplimentary to Petitioner, (See J.A. 39, par. 2) were disclosed to the Florida judge. If they were not, then the Georgia court, as well as any other Florida court, was free to consider them on the modification question.[13] There is the same "failure of proof" and uncertain finailty which was present in the Florida decree in *Halvey* and which prompted the Court to honor the decree of the forum state.

Of even greater significance is the fact that the decree which the Georgia trial court had before it was its *own* judgment which had been issued in 1977. (J.A. 20-21) The Florida decree, rendered subsequent to the filing of the Georgia complaint for modification,[14] merely adopted the original Georgia judgment. (J.A. 25-26) The Florida circuit judge's final order is captioned in language which clearly demonstrates this fact: "FINAL JUDGMENT ESTABLISHING AND ENFORCING OUT-OF-STATE DECREE." (J.A. 25)

Petitioner was not only asking the Georgia court to give full faith and credit, in a Constitutional sense, to a Florida decree of dubious finality, she was also in substance asking the court to give full faith and credit *to its own decree.*[15]

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[13]The pertinent Georgia and Florida decisions relating to modification of child custody decrees and res judicata are discussed, *infra,* p. 25. Also to be noted is the fact that Florida did not even consider a "change of circumstances". See, *infra,* p. 25.

[14]The Georgia complaint was filed on March 23, 1979 (J.A. 23), and the Florida decree was signed on April 18, 1979. (J.A. 26)

[15]The Florida court did alter the visitation rights under the Georgia decree somewhat, but the basic issue before both the Florida and Georgia trial courts was that of custody. In both courts, Petitioner, in reality, relied upon the original Georgia decree. It is the position of the National Conference of Commissioners on Uniform State Laws in their amicus brief that the U.C.C.J.A. "does nothing to convert the Georgia decree to a Florida decree". We are in total agreement with that position. See *infra,* p. 36.

Article IV, Section 1 of the Constitution, on its face, and by its very terms, does not require any state court to apply full faith and credit to its own judgments; yet, that is in fact the position which Petitioner is urging upon this Court. *Halvey* permitted the original decree of a sister state to be modified by New York. Certainly Georgia is permitted to modify its *own* judgment in accordance with a finding of changed circumstances. See note 13, *supra*. There is simply nothing in this record to trigger even the potential application of the full faith and credit clause to the judgment which the Georgia court had before it. This Court should hold that Article IV, Section 1 of the Constitution has no application at all to the set of facts presented by this record.

The "finality" approach which the Court followed in *Halvey* was not something new or revolutionary in the area of full faith and credit litigation. At least as early as 1910 in *Sistare v. Sistare, supra,* note 8, this Court specifically engaged in that type of analysis in determining whether to give full faith and credit to past due installments under a decree for future alimony. See also, *Barber v. Barber, supra,* note 11. The Court has continued to deal with the finality question of full faith and credit cases in a variety of situations. See *e.g., Durfee v. Duke,* 375 U.S. 106, 11 L.Ed. 186, 84 S. Ct. 242 (1963), where it was stated that:

> "Full faith and credit thus generally requires every state to give to a judgment at least the res judicata effect which the judgment would be accorded in the state which rendered it. 'By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here.' " 375 U.S. 109, 11 L.Ed. 190.

Two of the remaining cases of this Court dealing with full faith and credit in the area of child custody decrees also involve the finality question.

In *Kovacs v. Brewer, supra,* note 9, a New York mother sued in North Carolina to enforce a modified New York decree removing custody from the paternal grandfather (a North Carolina resident) and awarding it to the mother. Both the natural father and the grandfather were before the North Carolina court, and the child was present in North Carolina. A full hearing was held, and the North Carolina trial court ruled that the New York decree was not binding upon it and that the grandfather should retain custody of the child. The North Carolina Supreme Court affirmed. This Court granted certiorari and remanded the case to the North Carolina court, holding that if North Carolina based its ruling on changed circumstances within the purview of *Halvey,* it was unnecessary to consider the full faith and credit issue presented.

In so ruling, the court discussed res judicata and the finality of the New York judgment under the law of New York, finding that the New York decree was subject to modification on the ground of changed circumstances. Thus, if North Carolina found changed circumstances, it could vary the New York judgment.

The final decision of the Court in this area dealing with the finality approach was *Ford v. Ford, supra,* note 9. The decree sought to be enforced in the South Carolina court was a "dismissed agreed" order of a Virginia court, entered after the husband and wife had negotiated a child custody agreement between themselves without any intervention or participation by the court. The forum (S.C.) court had before it the mother, who had physical custody of the children in that state. The husband was also before the court, having answered the wife's complaint in a South Carolina state court. A full hearing was held in South Carolina. The Virginia order was refused full faith and credit, and the

mother prevailed on the custody issue. The South Carolina Supreme Court reversed and held that since Virginia would grant full faith and credit to the "dismissed agreed" order, South Carolina must do the same. On certiorari, this Court reversed, holding that the Virginia law did not view such an order as res judicata and that South Carolina was not required to give it full faith and credit so as to preclude South carolina from considering changed circumstances and the Carolina from considering changed circumstances and the best interest of the children. In declining once again to rule squarely on the full faith and credit issue, the Court alluded to *Halvey* and *Kovacs* and resolved the case on the basis of an analysis of "finality" in relation to the decree sought to be enforced in the forum state.

This Court has obviously made the finality analysis approach an integral part of the Constitutional law in the full faith and credit area, and, as evidenced by *Halvey, Kovacs,* and *Ford,* has given it particular significance where child custody decrees are involved. There is nothing wrong with that decisional process since it clearly recognizes and accommodates the fact that child custody decrees are really never "final" in the usual res judicata sense; that is, not subject to revision in the future. Indeed, child custody decrees should not be viewed as final because the best interest of children would not be served by any principle that foreclosed the intervention of a court to change or alter custody to protect or provide proper care for the child. That child custody decrees are always subject to change is well accepted as a universal doctrine in the common law world. Any other rule would be less than civilized.

We may have to simply face the fact that child custody decrees are so inherently subject to change that they cannot be dealt with in a workable fashion purely under the full faith

and credit clause of the Constitution. Justice Frankfurter sensed this in his concurrence in *May v. Anderson, supra,* note 9, when he said:

> "But the child's welfare in a custody case has such a claim upon the state that its responsibility is obviously not to be foreclosed by a prior adjudication reflecting another state's discharge of its responsibility at another time." 345 U.S. 536, 97 L.Ed. 1228.

The answer to the lack of stability in this area may be in federal legislation such as the new "Parental Kidnapping Prevention Act of 1980",[16] *supra,* note 7. That Act will permit the development of a body of law, supervised by this Court, which is uniformly applicable and enforceable as to all the states. The U.C.C.J.A. is subject to interpretation by each state which enacts it because it is a comity based Act. The new federal Act does not have this shortcoming and is potentially a far more potent and workable vehicle to combat child-snatching than the present case. The result sought by Petitioner would attach full faith and credit, a mandatory type concept, to child custody decrees which are just the opposite. The Court has declined to do this in the past and its decisions such as *Halvey, Kovacs* and *Ford* reflect that wisdom. These decisions are fatal to Petitioner's argument in the present proceeding. They should not be departed from at all, but should be reaffirmed. The parties who are concerned about child snatching should look to some other

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[16]Respondent has at this time no position one way or the other as to whether this new Act applies to the present litigation. Time limitations have so far prevented court-appointed counsel from studying and briefing this point. It is to be noted that Georgia has given the U.C.C.J.A. retroactive application even to a case on appeal. See, *Roehl v. O'Keefe,* 243 Ga. 696, N. 5 (1979).

more feasible source such as the new federal Act for a remedy to this problem.

The fourth case in this area which the Court has heard is *May v. Anderson, supra,* note 9. This case turned not on the question of "finality", but on the lack of personal jurisdiction over the absent wife by the court rendering the decree to be enforced.

In *May,* the husband and wife had married in Wisconsin and lived together there until the wife left to live in Ohio, taking their children with her. The husband obtained a Wisconsin divorce and custody decree without personal jurisdiction over the wife and then physically retrieved his children from Ohio. At a later time, when the children were visiting with the wife in Ohio, she refused to return them to Wisconsin. The husband then brought a habeas corpus proceeding in Ohio, seeking return of the children to him on the basis of the Wisconsin decree. The Ohio court granted full faith and credit to the Wisconsin decree and this Court reversed on certiorari.

Two crucial considerations required *May* to be decided the way it was by this Court. First, the Court recognized "that a mother's right to custody of her children is a personal right entitled to at least as much protection as her right to alimony."[17] Secondly, they found that Wisconsin did not have "the personal jurisdiction that it must have in order to deprive [the] mother of her personal right to their (her children) immediate possession." 345 U.S. 543, 97 L. Ed. 1227.

The critics of *May v. Anderson* choose to ignore the concept of personal jurisdiction which is so absolutely

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[17]The prior decision in *Estin v. Estin,* 334 U.S. 541, 92 L.Ed. 1561, 58 S. Ct. 1213 (1948) virtually demanded this conclusion.

fundamental to the administration of a system of laws between the several states. The potential for abuse in the absence of strict adherence to this principle was recognized as early as *Pennoyer v. Neff,* 95 U.S. 714, 24 L.Ed. 565 (1878) and continues to be viewed in this light in such recent decisions as *Kulko v. California,* 436 U.S. 84, 56 L.Ed.2d 132, 98 S. Ct. 1690 (1978). These critics also overlook *May's* protection of a parent's inalienable rights in a minor child. If *May* has encouraged child snatching, that is regrettable. It would be even more regrettable if this Court abandoned *May* and the important rights which it secures.

What application does *May* have to the present case? Respondent submits that in view of our argument on "finality", this decision does not even need to be considered. Petitioner urges, however, that the Florida court had personal jurisdiction of the Respondent and that the Florida decree should be given full faith and credit in Georgia.[18] *May* stands in Petitioner's path so she suggests that *May* be repudiated in the process. Such a repudiation of *May* would be neither prudent nor necessary.

In some of the amici curiae briefs which have been filed, it has been suggested that this Court is in the process of broadening and extending the basis for personal jurisdiction of a state over a non-resident defendant. The Court's recent pertinent cases seem to Respondent to be doing just the opposite.

The decisions in *Shaffer v. Heitner,* 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977); *World-Wide Volkswagen v. Woodson,* 62 L.Ed.2d 490, 100 S.Ct. 539 (1980);

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[18]This argument, of course, ignores what we have pointed out above; namely, that the Florida decree is nothing more than a Georgia decree in disguise after having been "laundered" through the Florida court.

Rush v. Savchuk, 62 L.Ed.2d 516, 100 S. Ct. 571 (1980); and *Kulko v. California,* 436 U.S. 84, 56 L.Ed.2d 132, 98 S. Ct. 1690 (1978) all undertake to restrict and narrow the assertion of personal jurisdiction by a state court over non-residents.

Shaffer v. Heitner restricted the teaching of *Pennover v. Neff,* 95 U.S. 714, 24 L.Ed. 565 (1878), insofar as it suggested a liberal personal jurisdiction rule in quasi in rem proceedings, and held that "all assertions of state court jurisdiction" were subject to the *International Shoe* fiarness jurisdiction" were subject to the *International Shoe* fairness test.

World-Wide Volkswagen held that the sale of a single automobile in one state which was involved in a wreck in the forum state was not a sufficient "affiliating circumstance" on which the forum state could predicate personal jurisdiction over a non-resident corporation. This "one isolated occurrence and whatever inferences can be drawn therefrom" was an inadequate basis for the court's exercise of jurisdiction. This Court also repudiated the idea of "foreseeability" except where the defendant's conduct is such that he should foresee that he may be sued in the forum state.

Rush held *inter alia* that the forum court could not constitutionally attribute the contacts of one party with the forum to that of another party even though there existed some kind of close relationship between the two parties.

Finally, *Kulko* demonstrated that even if this Court finds it necessary to reach the personal jurisdiction question, Florida did not have proper basis for asserting personal jurisdiction over Respondent.

In that case, California sought to exercise personal jurisdiction over a New York resident who had sent his chold to live with his ex-wife in California. A few quotes from

Kulko demonstrate its pertinent holdings and its applicability to our case, as well as its implicit approval of *May v. Anderson* (which it cites):

> "The cause of action herein asserted arises, not from the defendant's commercial transactions in interstate commerce, but rather from his personal, domestic relations. It thus cannot be said that Appellant has sought a commercial benefit from solicitation of business from a resident of California that could reasonably render him liable to suit in state court. . . .Furthermore, the controversy between the parties arises from a separation that occurred in the State of New York; Appellee Horn seeks modification of a contract that was negotiated in New York and that she flew to New York to sign. As in *Hanson v. Denckla,* 357 U.S. at 252, 2 L.Ed.2d 1238, 78 S. Ct. 1228, the instant action involves an agreement that was entered into with virtually no connection with the forum state. . . .It is Appellant who has remained in the state of the marital domicile, whereas it is Appellee who has moved across the continent" (citing *May v. Anderson*) 436 U.S. 97, 56 L.Ed.2d 144.

When our case is viewed in light of *Kulko* and the other personal jurisdiction cases just discussed, the following similarities appear:

1. Respondent's contact with Florida consisted of one isolated transaction of a non-commercial, personal nature, i.e., domestic relations. It was pursuant to an emergency situation called to his attention by the Florida authorities and with their full knowledge and consent;
2. The litigation between Respondent and Petitioner arises from a Georgia divorce and custody agreement which Petitioner agreed to while in Georgia and which had virtually no connection with Florida;
3. The Petitioner is the one who left the state of marital domicile and who has repeatedly moved her residence.

Thus, when only the contacts of Respondent with Florida are viewed, in accordance with *Rush, supra,* it is clear that *Kulko, World-Wide* and *Shaffer* raise grave doubts about the ability of Florida to exert personal jurisdiction over Respondent. These decisions are consistent with *May v. Anderson* and commend its continuing vitality, not its "consignment to history".

Finally, the Petitioner's argument on full faith and credit and personal jurisdiction totally ignores the fact that the U.C.C.J.A. is strictly a comity based Act.[19] It was intended to operate on the basis of cooperation between the adopting states, not on mandatory Constitutional principles such as full faith and credit.

> "The full faith and credit clause is not to be applied, accordion-like, to accommodate our personal predilections. It substituted a command for the earlier principles of comity and thus basically altered the status of the states as independent sovereigns." *Estin v. Estin,* 334 U.S. at 545-546, 92 L.Ed. 1567.

Comity is:

> "Courtesy, complaisance, respect, a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Comity is not a rule of law, but one of practice, convenience and expediency." BLACK'S LAW DICTIONARY, p. 334 (1957).

Georgia has viewed the U.C.C.J.A. as being based purely upon comity. While in the process of enforcing a Missouri custody decree against a Georgia resident, the Georgia Supreme Court stated that:

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[19]The Act was created on the basis of the concept of comity. See Amicus brief of National Conference of Commissioners on Uniform State Laws, p. 4. See also, *The Uniform Child Custody Jurisdiction Act: Progress and Pitfalls,* 17 Georgia State Bar Journal, p. 72 (1980); U.C.C.J.A., Commissioner's prefatory note, 9 U.L.A. p. 111 (1979).

> "It is, therefore, apparent that the General Assembly has mandated that the public policy of this state is to recognize, under principles of comity, child custody decrees where there is no personal jurisdiction that would satisfy the full faith and credit clause of our Federal Constitution." *Yearta v. Scroggins,* 245 Ga. at 832

In a case subsequent to *Yearta,* Georgia, while holding the U.C.C.J.A. Constitutional, restated its view that full faith and credit and personal jurisdiction arguments of the *May v. Anderson* type have nothing to do with enforcing the U.C.C.J.A.

> "When a due process violation is alleged, we cannot be sidetracked by arguments founded in the full faith and credit clause. (citations omitted) There are certainly judgments valid in one state and binding to anyone within its bounds which need not be given force elsewhere. Those judgments dealing with the welfare of a child may be given peculiar scrutiny in each interested state, but they are not less valid within the boundaries of the state rendering them." (citing *May v. Anderson*) *Goldfarb v. Goldfarb,* 246 Ga. at 28 (1980).

The point of all this is that it is a little difficult to see why, from a theoretical standpoint, full faith and credit and *Kulko* tye personal jurisdiction questions have anything to do with a statute such as the U.C.C.J.A. which everyone knew from the outset was enforceable between adopting states only on the basis of comity and cooperation. In appropriate cases, the Act is designed to go beyond full faith and credit, *Yearta, supra,* and to do so, not because of any mandatory compulsion, but because an adopting state is cooperating to solve the child-snatching problem. Full faith and credit has no place in the child custody decree area—this Court has never said that it does. It has even less of a place in connection with U.C.C.J.A. decrees, which depend for their enforcement

upon comity—a concept which is the antithesis of full faith and credit.

The instant case, *Webb v. Webb* did not even mention full faith and credit because Petitioner never raised the issue and because the U.C.C.J.A. is being administered in Georgia apart from the restrictions inherent in the full faith and credit approach. *Yearta* and *Goldfarb, supra,* make that much abundantly clear. Success of the U.C.C.J.A. is predicated upon each adopting state acting responsibly. The failure to so act, however, is not a full faith and credit clause violation because the only basis for the Act is comity. The *Webb* court simply exercised its right as an adopting state to interpret the U.C.C.J.A. in the circumstances of this case. Jurisdiction was found to be in Georgia under the Act on the basis of the child's physical presence and an emergency.[20] Full faith and credit was never urged to the court below, and even if it had been, it had nothing to do with the case. The court viewed the situation as one justifying a denial of comity to the Florida proceeding and requiring an assumption of jurisdiction by Georgia to deal with its *own* custody decree. *Webb* has now been limited to this unusual set of facts, see *Yearta, supra,* page 10, and there is no valid reason for this Court to disturb it.

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[20]Certainly the Georgia court had sufficient evidence to justify its factual conclusion of emergency. Any prudent court would be concerned about a six-year-old child left without adult supervision for a week-end. The court could use its common sense to see the danger to such a child from items commonly found in most households, such as electricity, gas, firearms, chemicals, etc.

III.

UNDER THE LAW OF FLORIDA AND GEORGIA, CHILD CUSTODY DECREES DO NOT HAVE THE REQUISITE FINALITY TO REQUIRE THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE.

In Florida a child custody decree may be modifed "upon a showing of competent substantial evidence that: (1) there has been a substantial change in the condition of the parties and (2) the best welfare of the child will be promoted by the change of custody.[21]

In Georgia modification is governed by statute[22] and common law.[23] The pertinent language of the statute is: "The provisions of this Code section shall not limit or restrict the power of the Court to enter judgment relating to custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.[24]

The Florida judgment would be subject to attack in Florida since there is nothing in the record that indicates that the Circuit Court of Alachua County considered evidence of any change in the condition of the parties. In fact, petitioner did not allege changed circumstances in her Petition to Establish, Enforce and Modify Foreign Judgment (J.A. 6-

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[21]*Stricklin v. Stricklin,* 383 So.2d 1183, 1184 (1980); *Sanders v. Sanders,* 376 So.2d 880, 882 (1979); *Bennett v. Bennett,* 73 So.2d 274, 278 (1954); *Belford v. Belford,* 32 So.2d 312, 313 (1947).

[22]Ga. Code Ann. § 30-127.

[23]*Robinson v. Ashmore,* 232 Ga. 498 (1974).

[24]Ga. Code Ann. § 30-127(b).

8), nor did the court make a finding of substantial change in circumstances. (J.A. 25-26)

In addition, Florida law considers a custody decree as res judicata only as to facts and issues that were known by the court on the date of its decree.[25] "A decree is a final adjudication based on facts *then presented in evidence.*"[26] Florida's primary concern is the welfare of the child, and so it should be. If there was evidence of conditions, affecting the welfare of the child, that occurred since the original decree and the Florida court did not consider this evidence, then a Florida court would not be precluded from considering this evidence in a subsequent modification proceeding. Res judicata and finality have a different meaning when applied to child custody cases. The divorce decree is a final adjudication as to the status of the parties to the divorce proceedings, but the capacity, ability, or fitness of the parto to whom the child was awarded may become entirely different. In child custody determinations the primary concern is always the best interests of the child. If the custody decree was final in the traditional sense, the child would be made to suffer. Both Georgia and Florida recognize this policy and, as noted, allow prospective modification of custody decrees. Therefore the Georgia court was not precluded from hearing evidence of changed circumstances dating back to its original decree. Under the rule of *Halvey, Ford* and *Kovacs,* what Florida may do, Georgia may do.[27]

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[25]*Patterson v. Patterson,* 214 So.2d 381 (1968); *Bennett v. Bennett,* 73 So.2d 274, 277 (1954); *Belford v. Belford,* 32 So.2d 312, 314 (1947).

[26]214 So.2d at 382 (emphasis added).

[27]*Supra* note 9.

IV.

FLORIDA LACKED JURISDICTION OF THE CUSTODY ISSUE BECAUSE THE CIRCUIT COURT OF ALACHUA COUNTY DID NOT FOLLOW THE PROVISIONS OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA) WHICH NOW RULE JURISDICTION OVER CHILD CUSTDY CASES IN BOTH FLORIDA AND GEORGIA.

As previously mentioned, this case does not involve an initial custody determination, but an attempt by a Florida court to modify and enforce an original Georgia custody decree. Both Florida and Georgia have passed the Uniform Child Custody Jurisdiction act (U.C.C.J.A.).[28] As a result of passing the U.C.C.J.A., both states have agreed as a matter of comity to cooperate in child custody matters. Also, both states recognize the essential policies of the U.C.C.J.A. as expressed in section 1.[29]

A short discussion of the background of the U.C.C.J.A. will help put Florida's failure to follow their own statute in perspective. In child custody disputes, the welfare of the child is, for obvious reasons, viewed as an important counterbalance to our usual interest in finality which finds its expression in the important doctrines of collateral estoppel,

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[28]9 U.L.A. Child Custody Jurisdiction 111-170, § § 1-28; (1979); Fla. Stat. Ann. § § 61.1302-.1348 (West); Ga. Code Ann. § § 74-501 to 525 (Supp. 1980).

[29]9 U.L.A. 116-117; Fla. Stat. Ann. § 61.1304; Ga. Code Ann. § 74-501.

res judicata, and full faith and credit. This strong interest in the welfare of the child led to a notion of concurrent jurisdiction in the context of child custody determination. Justice Traynor, writing in *Sampsell v. Superior Court,* 197 P.2d 739 (1948), addressed the problem in his usual cogent way and recognized that as long as flexibility was necessary in a child custody case, the critical point in interstate custody cases was to obtain control over the power to modify as well as the power to make the initial award. Traynor's concept of "concurrent jurisdiction" would allow jurisdiction to award or modify custody in several states: the state of the child's domicile, the state where the child is physically located, or the state which has personal jurisdiction over the parents. The notion was that excessive conflict between these concurrent jurisdictions could be avoided by each state's respect for the other and the strong interest in cooperation. This view was adopted by the Restatement (Second), Conflict of Laws Section 79 (1971). However, this approach was criticized as allowing too much uncertainty in the area which redounds to the disadvantage of the child. Professor Ratner, whose writings form the basis of the alternative approach to this problem, criticized the *Sampsell* approach as follows:

> "The *Sampsell* opinion performed the valuable function of carefully reexamining the jurisdictional problem, but the multiple jurisdiction-No full faith and credit solution reflects the inadequacies of its conventional components: unilateral removal of the child is encouraged and the custody decision may be made by a forum that is unfairly inconvenient to the stay-at-home parent and far from most of the relevant evidence. In addition, litigation may proliferate. Separate actions by divergent parents can produce conflicting decrees. . ." Ratner, Legislative Resolution of the Interstate Child

Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S.Cal.L.Rev. 183, 193 (1965).[30]

In short, state courts were not able to exercise the requisite sensitivity to interstate cooperation to shield the child from damaging instability. The solution to this problem was to find a way to heighten the certainty and finality in custody cases without sacrificing the important interests in flexibility necessary to protect the child. The key is interstate co-operation, which works toward finding one state which is the proper forum to make and modify custody awards and then requires states to defer to that state and hold the line against repetitive litigation of the issue.

The U.C.C.J.A. was passed in an attempt to address these problems. The Act has proved popular and has been passed by 42 states including Georgia and Florida. The Act seeks, in the typical case, to vest jurisdiction in one state only. The Reporter for the U.C.C.J.A. describes the outlines of this Act as follows:

> "The basic scheme of the Act is simple. First, one court in the country assumes full responsibility for custody of a particular child. Second, for this purpose a court is selected which has access to as much relevant information about the child and family in the state as possible. Thurd, other essential evidence, which is inevitably out-of-state in the case of an interstate child, is channelled into the first court which might be called the 'custody court'. Fourth, other states abide by the decision of the custody court and enforce it in their territory, if necessary. *Fifth, adjustments in visitation and other ancillary provisions of the decree, and*

[30]Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws", 22 Vand. L.R. 1207, 1218-19 (1969).

> *custody changes, if any, are as a rule made by the original custody court.* Sixth, if the child and his family no longer have appreciable ties with the state of the original court, a new custody court is selected to take the place of the original one for purposes of adjustments and modifications, and pertinent information is channelled from the prior to the subsequent custody court." (emphasis added)

The spirit of the Act calls for interstate cooperation, and the Act represents a creative legislative response to the manifold pressures impinging on a child custody decision. In an area where strong interests compete for space in the overall equation, the political process is precisely the locus of legitimate decision making. Both Florida and Georgia have adopted the Uniform Act in an effort to solve the problems. But the final solution cannot be achieved by the wooden imposition of the full faith and credit clause on this complex decision. As the interest in finality and certainty is reduced, we face increasing problems of child kidnapping, constant relitigation and possible psychological damage to the child, while elevating finality and certainty leads to problems of ignoring the welfare of the child in changed circumstances, ignoring the proper claims of the parent, ignoring the demands of fair procedure and ignoring the interests of states with significant and important connections with the family. Clearly, this is an area where sensitive, contextual judgments are needed, as opposed to a simple, straightforward rule for all cases.

To react to the child kidnapping problem, which is undoubtedly a real problem, by instituting a rigid finality requirement would be to solve one problem while creating other, more serious ones. This case is a perfect vehicle to illustrate that point. To demand full faith and credit be given to a state judgment made pursuant to a comity based statute,

where the state judgment is not made in the spirit of cooperation demanded under the Act, where the state has questionable jurisdiction of the case at best, and where the interests of Georgia are so strong as to be labeled compelling, is to elevate finality to the exclusion of other important interests. However, there are many importasnt interests in the child custody area that cannot be subjugated to finality. The most important of these interests is the concern for the welfare of the child. But several other interests are important and must not be submerged altogether. Professor Clark, in his excellent casebook on the law in this area,[31] after commenting on the strong interest in the welfare of the child, points out that:

> "At the same time it is true that parents or other contending parties in custody cases have claims which must be heard and respected. The court as an agency of the state is not, under our legal system, given unlimited authority to do whatever it sees fit to benefit the child. It must act in the context of litigation between individual claimants, on the basis of evidence before it. There may often be situations in which the general percept that the child's welfare controls will be in conflict with the claims of parents and the demands of fair procedure. Such conflicts have to be faced and resolved. It is not only useless but harmful to pretend that they do not exist. (p. 1026)

Thus, in fashioning an orderly response to the problem of custody determination, several interests must be balanced: the welfare of the child, the claims of the parents, the demands of fair procedure, as well as the interest of a sovereign state in effectuating its own policies in the area of family relations.

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[31]Clark, *The Law of Domestic Relations* (1968).

The Act attempts to address all of these competing interests, but can only do so if states will follow its provisions faithfully and defer to each other's judgments when properly made. Both Georgia and Florida law, in general, expressed a willingness to follow the mandates of the Act.[32] However, in this case the Circuit Court of Alachua County, Florida essentially ignored the Act and proceeded to modify Georgia's judgment in what might be characterized as a punitive decree. A discussion of the relevant provisions of the Act will demonstrate the lack of attention to the Act accorded by the Florida Circuit Court.

The Act makes clear that mere physical presence without more is not enough to give a state court jurisdiction to determine custody or to modify a foreign custody decree. By removing this jurisdictional foundation, the Act moves to solve the major problems associated with child kidnapping and subsequent relitigation in foreign states with little or no connection with the case. In order to obtain jurisdiction under the Act, the case must meet one of four criteria. The primary two jurisdictional bases under the Act are the so-called "home state" test[33] (the state in which the child has been living with a parent for six months) and the "best interest of the child" test[34] (the child and at least one contestant have a significant connection with the state and

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[32]*Matthews v. Matthews,* 238 Ga. 201, note 5, 203 (1977); *Reid v. Adams,* 241 Ga. 521, 527 (1978); *Yearta v. Scroggins,* 245 Ga. 831 (1980); *Hofer v. Agner,* 373 So.2d 48 (1979); *Hegler v. Hegler,* 383 So.2d 1134 (1980).

[33]9 U.L.A. Child Custody Jurisdiction 122-23, § §(a) (1) (1979); Fla. Stat. Ann. §61.1308(1)(a); Ga. Code Ann. §74-504(a)(1).

[34]9 U.L.A. §3(a) (2); Fla. Stat. Ann. §61.1308(1)(a); Ga. Code Ann. §74-504(a) (2).

there is available in the state substantial evidence on which an informed custody decision can be made).

In the case at bar, Florida can claim jurisdiction under the "home state test" and Georgia can claim jurisdiction under the "best interest of the child" test. Petitioner agrees with this conclusion in her brief to the Supreme Court of Georgia,[35] and the Florida courts have also agreed. In *Hofer v. Agner,* 373 S.2d 48 (1979), a Florida couple was divorced and the mother was given custody of two young children with visitation rights to the father. The mother subsequently moved to New Jersey in June, 1976, and the father filed a petition in Florida for change of custody in July, 1978. The mother filed a motion contending that Florida lacked jurisdiction by virtue of the U.C.C.J.A. The Florida courts agreed that Florida did not have jurisdiction under the "home state" test since the mother had been in New Jersey for more than six months. However, the Florida courts determined that the trial court did have jurisdiction of this case under Florida Statute Section 61-1308(1) (b) because it was in the best interest of the child that Florida assume jurisdiction. As the court stated,

> Although the children in this cause now reside in New Jersey with their mother and stepfather, they have lived the majority of their lives in Florida and their other relatives reside here. Section 61.1308(1) (b) does not require that a child's only "significant connection" be with the state of Florida in order for jurisdiction of the Florida court to attach. It only requires that the child have a "significant connection" with this state. In view of the history of this case as above related and such facts as are shown in the record, we cannot say that they conclusively established that jurisdiction should be relinquished by the Florida court. (p. 51)

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[35]Brief for Appellant at 14, *Webb v. Webb,* 245 Ga. 650 (1980).

The problem with this result is that it seems to leave untouched the problems associated with concurrent jurisdiction which caused the need for statutory reform. Not surprisingly, the Act addresses this problem and has provisions to reduce the conflicts caused by such concurrent jurisdiction. The case at bar is concerned with a modification of a Georgia award of custody. In such cases, the Act is very clear as to which state has jurisdiction. As it states in Section 14,

> If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify and the court of this state has jurisdiction.[36]

Therefore, the Act is clear that Florida can exercise jurisdiction in this case only after determining that Georgia no longer has jurisdiction or has declined to exercise jurisdiction. The comments to this section in the U.C.C.J.A. indicate that all petitions for modification should be made to the prior state as long as that state still has sufficient contact with the case to satisfy the jurisdictional requirements of the Act (either the home state test or the best interest of the child test). The best interest of the child test for jurisdiction states that:

> "It is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with the state, and (ii) there is

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[36]9 U.L.A. 153-155; Fla. Stat. Ann. §61.133; Ga. Code Ann. §74-515(a).

> available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships."[37]

Under this jurisdictional test, Georgia certainly has jurisdiction and has not declined to assume such jurisdiction thus foreclosing the Florida court from modifying the Georgia decree. Georgia issued the original decree. Pursuant to its decree petitioner took the child to the state of Florida. She moved with the child a total of six times in a two-year period. (T. 113, 114) The findings of the Georgia court show that she abandoned her child in Gainesville, Florida on February 19, 1979. Respondent went to Florida to get the child only after the Florida authorities summoned him, and returned to Georgia, the state where custody was decided initially. (T. 22-24) On the basis of these facts, the Georgia court determined that it was in the best interest of the child that it take jurisdiction. (J.A. 40).

As the comments to the U.C.C.J.A. state:

> "In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere.
>
> For example, if custody was awarded to the father in state 1 where he continued to live with the children for

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[37] *Supra* note 34.

two years and thereafter his wife kept the children in state 2 for six and one-half months (three and one half months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the 'home state' of the child."[38]

It does not appear that the Florida court at the time it issued its order considered whether or not Georgia had jurisdiction under the Act or had declined to assume jurisdiction under the Act. In fact, Florida was put on notice by petitioner that Georgia had issued the original decree and that there "may be pending litigation in the State of Georgia". (J.A. 12) However, it is clear that if the Circuit Court of Alachua County, Florida had followed the Uniform Child Custody Jurisdiction Act, it would have referred the case to Georgia under Section 14 of the Act. Thus, Florida could not claim jurisdiction under the Act and Georgia was under no compulsion to grant full faith and credit to the Florida decree.

The two other less important jurisdictional bases under the Act are the "emergency test"[39] (based on physical presence of the child in the state where emergency conditions exist; i.e., abandonment, or threat of mistreatment or abuse, or where the child is otherwise neglected or dependent), and the "absense of alternative"[40] test (where no other state has

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[38]9 U.L.A. at 154.

[39]9 U.L.A. § 3(a) (3); Fla. Stat. Ann. § 61.1308 (1) (c); Ga. Code Ann. § 74-504(a) (3).

[40]9 U.L.A. § 3 (a) (4); Fla. Stat. Ann. § 61.1308 (1) (d); Ga. Code Ann. § 74-504 (a) (4).

jurisdiction under the first three tests or has declined to exercise it so that it is in the best interest of the child that the forum state exercise jurisdiction.)

Certainly the Georgia court had jurisdiction under Georgia Code Annotated Section 74-504(3) which is Section 3(a)(3), the emergency section of the U.C.C.J.A. Respondent was contacted by the Florida authorities and informed that his child had been abandoned by his former wife. Respondent called his attorney for advice and then called the Florida Division of Family and Children Services in Gainesville to inform them of the situation. After taking these precautions he went to Florida to get his child. (T. 22-24) When he arrived in Florida, he informed the juvenile authorities in Gainesville of the situation and gave them his name, address and phone number. (T. 124-125)

Florida law recognizes that the primary concern is the best interests of the child and that under the U.C.C.J.A. if the child is physically present in a state and it has been abandoned or it was necessary in an emergency to protect the child,then the state with physical custody has jurisdiction.[41]

Under the U.C.C.J.A. Georgia had continuing jurisdiction and Florida was bound by the Act to allow Georgia to exercise that jurisdiction. In the spirit of the Act Florida should have contacted the Georgia court and initiated a cooperative effort to determine which court should decide the issue of modification of the original decree. This kind of cooperation is crucial to the continued validity and effectiveness of the U.C.C.J.A. Florida did not make any effort to inquire into jurisdiction in Georgia; if it had, it

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[41]Fla. Stat. Ann. §61.1308(1)(c); See, *Hegler v. Hegler,* 383 So.2d 1134 (1980); *Trujillo v. Trujillo,* 378 So.2d 812 (1980).

probably would have concluded that Georgia had jurisdiction under the U.C.C.J.A. In addition, Florida did not comply with Section 22 of the U.C.C.J.A. and request a certified copy of the transcript of the hearing on the original custody decree.

As long as Georgia had jurisdiction, Florida violated the U.C.C.J.A. when it modified the Georgia decree. Since the U.C.C.J.A. confers jurisdiction upon courts and Florida did not follow the dictates of the U.C.C.J.A., Florida did not have subject matter jurisdiction under the Act. The Supreme Court of Georgia recognized this lack of jurisdiction and stated: "we find that the pendency of the Florida action at the time the Georgia action was filed did not preempt the jurisdiction of the Georgia Court." (J.A. at 50)

Petitioner contends, in her petition for certiorari (at 2), that upon the order of the Florida court, the Georgia decree awarding her custody became a Florida decree. Therefore, she reasons, Georgia must give it full faith and credit. However, in its amici brief, the National Conference of Commissioners on Uniform State Laws pointed out that Sections 13 and 15 of the Act do not domesticate the foreign decree.[42] The Georgia decree did not become a Florida decree. Under sections 13 and 15 of the Act, Florida was merely required to recognize and enforce the decree, in like *manner* as a custody decree rendered by a circuit court of the state.[43] Florida was not required to consider nor did they consider evidence of changed circumstances since the date of the Georgia decree. In fact, all that Petitioner was required to do was file a certified copy of the Georgia decree

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[42]Amici Curiae Brief for National Conference of Commissioners on Uniform State Laws at 4.

[43]9 U.L.A. 151-153 and 158-159; Fla. Stat. Ann. §61.1332.

in the office of the clerk of district court. It is clear that Sections 14 and 15 are to be read together.[44] As the official comments to Section 15 note, "The authority to enforce an out-of-state decree does not include the power to modify it. If modification is desired, the petition *must* be directed to the court which has jurisdiction to modify under section 14.[45]

It is a well-established rule of law that a court of one state need not give full faith and credit to the judgment of a sister state, taken without jurisdiction over the subject matter[46] or person. There is no indication that the issue of jurisdiction was fully litigated in the Florida court. Since no issue was made of jurisdiction in Florida, the Georgia court could consider the validity of Florida jurisdiction. The Georgia courts were not required to give full faith and credit to a judgment brought pursuant to the U.C.C.J.A alone, when Florida did not have jurisdiction under that Act.

CONCLUSION

The question presented for review has not been adequately raised in the Court below. Even if the full faith and credit issue was properly before this Court, the Georgia Supreme Court's decision should be affirmed for the variety of reasons which we have set out above.

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[44]Commissioner's notes to §13 says as much: "this section and sections 14 and 15 are the key provisions which guarantee a measure of security and stability of environment to the 'interstate child' by discouraging relitigation in other states." 9 U.L.A. at 151.

[45]9 U.L.A. 158 (emphasis added)

[46]*Durfee v. Duke,* 375 U.S. 106 (1963).

This Court should dismiss the writ of certiorari as improvidently granted or in the alternative, affirm the Georgia Supreme Court on the merits of the issue presented. In any event, the Georgia judgment in favor of Respondent should be left intact.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

V.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

SUPPLEMENTAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

BASIS FOR SUPPLEMENTAL BRIEF	1
EFFECTIVE DATE OF ACT	1
APPLICABILITY OF ACT TO THIS CASE	6

BASIS FOR SUPPLEMENTAL BRIEF

During oral argument the Chief Justice requested counsel for the Respondent to submit a supplemental brief incorporating the authorities called to the Court's attention concerning the newly enacted federal "Parental Kidnaping Prevention Act of 1980". The legislative history and authorities requested are set out below.

EFFECTIVE DATE OF ACT

The new Act[1] (sponsored by Senator Malcolm Wallop of Wyoming[2] and hereinafter referred to as the Wallop measure) was signed into law by the President on December 28, 1980, and was only a portion of a more comprehensive Act "to amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration." The delayed effective date of July 1, 1981, suggested to the Court by petitioner is found in Section Two of the Act and provides that "the amendment made by this Act shall take effect on, and apply to services furnished on or after, July 1, 1981." (emphasis added)

The legislative history of the pneumococcal vaccine bill, H. R. 8406,[3] which became the vehicle for enactment of the Wallop measure as a part of Public Law 96-611, shows that the delayed effective date provided in Section Two of Public Law 96-611 was the final section of H. R. 8406, applicable only to

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[1] Act of Dec. 28, 1980, Pub. L. 96-611, §§ 6-10.

[2] See Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess. 133 (1980) (Testimony of Professor Russell M. Coombs) (hereinafter cited as Senate Joint Hearing).

[3] H. R. 8406, 96th Cong., 2d Sess. (1980).

Section One, until the Wallop measure and various other provisions, none of them dealing with pneumococcal vaccine, were added to the bill on the Senate floor, as new Sections Three through Eleven.[4] They were added without discussion of the applicability of Section Two to the new sections.[5] The legislative intent that Section Two would delay the effectiveness of Section One but not of Sections Three through Eleven is shown also by the fact that Sections 5(c) and 11(a) of Public Law 96-611 specify effective dates for various provisions of Sections Five and Eleven, yet Section Two provides no exceptions for them.[6]

The legislative history of the other bills in which the Wallop measure was processed points to the same conclusion.

Each time that a bill containing the Wallop measure also contained a generally delayed effective date, the legislative history of the bill suggests either inattention to the specific question of whether the effectiveness of the Wallop measure should be delayed or an intent to exempt the Wallop measure from the general delay. The first such occasion was January 25 and 30, 1978, when the Wallop measure was added to the criminal code bill on the Senate floor without discussion of whether the delayed effective date of that bill would be applicable to the portions of the Wallop measure that would create no new crime.[7] The second time was on January 17, 1980, when the Senate Judiciary Committee reported another criminal code bill, specifically excepted the pertinent sections of the Wallop measure from the general provision delaying the effective date

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[4] 126 Cong. Rec. S. 16498, 16504-08 (daily ed. Dec. 13, 1980).

[5] Id.

[6] Act of Dec. 28, 1980, Pub. L. 96-611, §§ 2, 5(c), 11(a).

[7] 124 Cong. Rec. S. 860 (daily ed. Jan. 30, 1978); 124 Cong. Rec. S. 498-503 (daily ed. Jan. 25, 1978).

of the Act, and provided instead that they would take effect on October 1, 1980, or at enactment (which was not expected to occur for at least several months), whichever occurred later.[8] The third time was on September 25, 1980, when the House Judiciary Committee reported a criminal code bill with a delayed effective date and without any discussion of the applicability of the delay to the Wallop measure.[9]

Those three criminal code bills were extremely long and complex, and in such contexts inattention to the applicability of delayed effective dates to the Wallop measure is not surprising. There is a marked contrast between those bills and the occasions on which the Wallop measure was processed as an individual bill or as part of another vehicle shorter and more manageable than the criminal code bills.

No delay in the effectiveness of the Wallop measure was provided when it was introduced by Senator Wallop as an individual bill (S. 105),[10] when very similar individual bills (H. R. 1290;[11] 3654;[12] and 7291[13]) were introduced in the House,

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[8] S. 1722, 96th Cong., 1st Sess. 107-08, 335, 340-42, 355-56 (Jan. 17, 1980); S. Rep. No. 96-553, 96th Cong., 1st Sess. 583-87, 1217, 1253-55, 1260-61, 1263, 1269 (Jan. 17, 1980). That exception was created by the Senate committee at the suggestion of Professor Russell M. Coombs. Parental Kidnaping Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary, 96th Cong. 2d Sess., Serial No. 73, at 132 et seq. and n. 14 (1980) (statement of Professor Russell M. Coombs) (hereinafter cited as House Parental Kidnaping Hearing).

[9] H. R. 6915, 96th Cong., 2d Sess. 460-63 (Sep. 25, 1980); H. R. Rep. No. 96-1396, 96th Cong., 2d Sess. 638-40 (Sep. 25, 1980).

[10] S. 105, 96th Cong., 1st Sess. (1979); 125 Cong. Rec. S. 372-95 (daily ed. Jan. 23, 1979).

[11] H. R. 1290, 96th Cong., 1st Sess., 125 Cong. Rec. H227 (daily ed. Jan. 23, 1979).

[12] H. R. 3654, 96th Cong., 1st Sess., 125 Cong. Rec. H2264 (daily ed. Apr. 23, 1979).

[13] H. R. 7291, 96th Cong., 2d Sess., 126 Cong. Rec. H3386 (daily ed. May 7, 1980).

when the Wallop measure was added to the domestic violence bill (H. R. 2977) on the Senate floor on August 25, 1980,[14] when H. R. 2977 passed the Senate on September 4, 1980,[15] when the bill was approved by the conference committee on September 25, 1980,[16] or when the House approved the conference report[17] on October 1, 1980.[18]

S. 3259, a bankruptcy bill containing the Wallop measure, as introduced on December 9, 1980, and passed by the Senate the same day, specified a delayed effective date for certain sections on other subjects but provided for no delay in the effectiveness of the Wallop measure.[19]

In the five sets of Senate and House hearings held in 1977, 1978, 1979, and 1980 when testimony concerning the Wallop measure was received, not once did any witness, or any of the various Senators and Representatives who expressed opinions concerning the measure, suggest a delay in the effectiveness of the provisions that created no new federal crime.[20]

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[14] 126 Cong. Rec. S11455, 11465-69, 11475, 11483-99 (daily ed. Aug. 25, 1980).

[15] 126 Cong. Rec. S12051-52, 12055-56, 12061, 12066 (daily ed. Sep. 4, 1980).

[16] H. R. Rep. No. 96-1401, 96th Cong., 2d Sess. (1980).

[17] 126 Cong. Rec. H9763-75 (daily ed. Sep. 25, 1980).

[18] 126 Cong. Rec. H10400-08 (daily ed. Oct. 1, 1980).

[19] S. 3259, 96th Cong., 2d Sess. 118-31, 156 (1980); 126 Cong. Rec. S15943-45, 15960 (daily ed. Dec. 9, 1980).

[20] House Parental Kidnaping Hearing; Senate Joint Hearing; Addendum, Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess. 271-72 (1980) (question of Senator Charles McC. Mathias, Jr., and reply of Professor Russell M. Coombs); Reform of the Federal Criminal Laws: Hearings Before the Senate Comm. on the Judiciary, 96th Cong., 1st Sess., Part XIV, at 9995, 10626-37, 10640, 10669-74 (1979); Parental Kidnaping 1979: Hearings Before the Subcomm. on Child and Human Development of the Senate Comm. and Labor and Human Resources, 96th Cong., 1st Sess. (Apr. 17, 1979); Legislation to Revise and Recodify Federal Criminal Laws: Hearings on H.R. 6869 Before the Subcomm. on Criminal Justice on the House Comm. on the Judiciary, 95th Cong., 1st and 2d Sess., Serial No. 52, Parts 1-3, at 195-99, 399-409, 720-35, 1002-31, 1314-15, 2561-63, 2729-30, 2807-10, 2816-20, 2848-50, 2871-75 (1977-78).

On the only occasion during the hearings when the effective date of those provisions was specifically discussed, Professor Russell M. Coombs informed the House Subcommittee on Crime that the Senate Judiciary Committee had at his suggestion excepted the civil provisions of the Wallop measure from the general delay of the effective date of the then-pending Senate criminal code bill, and described that treatment of the matter as "a major improvement" over provisions substantially delaying their effectiveness.[21]

It is especially significant that the report of the domestic violence conference committee approved a version of the Wallop measure that would have taken effect immediately upon enactment.[22] The conference committee made substantive and unique changes in certain aspects of the Wallop measure as a result of negotiation and compromise between Senate and House members of the committee.[23] The actions of the Senate and House in incorporating in Public Law 96-611 precisely the language of the conference committee product, rather than any of the other versions of the Wallop measure, make it clear that the intention was to enact the Wallop measure in the form that had been agreed on by representatives of the two Houses in the conference committee and had been later approved by the whole House. Indeed, when H. R. 8406 was being considered on the House floor, Representative Ullman, who was managing the bill, relied upon the identity of the version of the Wallop measure in the bill with the version that had been adopted by the conference committee and later approved by the House as

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[21] House Parental Kidnaping Hearing at 132 et seq. and H. 14 (Statement of Professor Russell M. Coombs).

[22] See note 16 supra.

[23] Compare H. R. Rep. No. 96-1401, 96th Cong., 2d Sess. (1980), with 126 Cong. Rec. S11455, 11465-69, 11475, 11483-99 (daily ed. Sep. 25, 1980), and H. R. 6915, 96th Cong., 2d Sess. 460-63 (Sep. 25, 1980).

the reason for finding the inclusion of the Wallop measure in H. R. 8406 to be "non-controversial in any sense."[24] The inference is very strong that both Houses intended the Wallop measure to be immediately effective when enacted as part of Public Law 96-611, just as it would have been if the conference report had been approved by the Senate and signed by the President.

APPLICABILITY OF ACT TO THIS CASE

Since the Act became effective subsequent to the decision of the Georgia Supreme Court, its applicability to this specific case should not, in the first instance, be considered by this Court.[25]

Even if not applicable to this specific case, the impact of the Act upon the question raised in the certiorari petition is so great as to render the present case of only isolated significance.[26]

The appropriate disposition for this Court to make is to dismiss the writ of certiorari as improvidently granted and to leave the parties free to seek any further relief needed at such time as this Act applies to them or the appropriate[27] provisions of the Uniform Child Custody Jurisdiction Act are utilized.

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[24] 126 Cong. Rec. H12500 (daily ed. Dec. 13, 1980).

[25] Cf. Bradley v. School Board of Richmond, 416 U.S. 696, 40 L.Ed. 2d 476, 94 S. Ct. 2006 (1974).

[26] See Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614 (1954).

[27] During oral argument, Respondent called Sections 19(b) and 20(c) (F.S.A. §61.134(2), Ga. Code Ann. §74-520(b) and F.S.A. §61.1342(3), Ga. Code Ann. §74-521(c)) to the Court's attention as setting forth a procedure under the Uniform Act for acquiring personal jurisdiction over a non-resident. This procedure is somewhat like that found in the Uniform Reciprocal Enforcement of Support Act of 1968, which was tacitly approved by this Court in Kulko v. California, 436 U.S. 84, 56 L.Ed.2d 132, 98 S. Ct. 1690 (1978), see especially footnotes 13 and 14. As suggested by Justice Brennan during oral argument, Sections 19(b) and 20(c) would be available to petitioner in connection with any future litigation should she choose to use them.

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This is to certify that I have this day served a copy of the foregoing Supplemental Brief of Respondent upon Petitioner and attorneys for Amici Curiae by depositing a copy of same in the United States mail with first-class postage paid addressed as follows:

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No. 79-6853

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

v.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

Page

SUPPLEMENTAL STATUTORY PROVISIONS v

ARGUMENT:

I. RESPONDENT'S CHARACTERIZATION OF THE EVIDENCE FROM THE RECORD AND TRANSCRIPT BELOW IS MISLEADING 1

II. CERTIORARI REVIEW BY THIS COURT IS APPROPRIATE AND TIMELY 4

A. Petitioner Adequately and Timely Raised Her Constitutional Issue 4

B. The Passage of the Parental Kidnaping Prevention Act should not Impede Review of this Case 7

III. THE CIRCUIT COURT OF ALACHUA COUNTY, FLORIDA ASSUMED SUBJECT MATTER JURISDICTION CONSISTENT WITH FLORIDA LAW AND ITS INTERPRETATION BY FLORIDA APPELLATE COURTS 8

A. The Uniform Child Custody Jurisdiction Act Once Adopted by a State is Subject only to the Binding Interpretation of its Own Courts Absent Infringement of Constitutional Protections 9

B. The Circuit Court of Alachua County Correctly Interpreted the Provisions of Florida Law in Exercising Subject Matter Jurisdiction 10

C. The Circuit Court of Aluchua County, Florida was not Required by Florida Statutes to Decline Jurisdiction Where a Proceeding was Commenced in Georgia over Two Weeks after it Accepted Jurisdiction of the Case 14

D. The Florida Court's Assumption of Subject Matter Jurisdiction, being Consistent with Florida Law Interpreting the UCCJA is not Subject to Collateral Attack in this Court..... 15

IV. THE FLORIDA ORDER HAD THE REQUISITE FINALITY FOR ENTITLEMENT TO FULL FAITH AND CREDIT IN GEORGIA COURTS 17

A. The UCCJA, when Adopted in Florida, Changed Previous State Law as to the Finality of Custody Decrees 17

B. The Florida Custody Order was Res Judicata as to Findings of Fact and Law and as to the Custody Determinations Made 18

C. The Custody Determination Made by the Florida Court could not be Modified without Evidence of a Substantial Change of Conditions 20

CONCLUSIONS

V. CONCLUSION..... 21

VI. APPENDIX..... 1a

TABLE OF AUTHORITIES

Page

Cases:

Anthony v. Anthony,
212 Ga.356,92 S.E.2d 857 (1956)..... 11

Bragg v. Bragg,
224 Ga.733,164 S.E.2d 560 (1968)..... 10

Braniff Airways, Inc. v. Nebraska Board of Equalization and Assessment,
347 U.S.590,598-599 (1945)..... 6, 7

Chicot County Drainage District v. Baxter State Bank,
308 U.S.371,376-377 (1940).....16

Detko/Roberts v. Stikelether,
370 So.2d 383 (Fla.App.1979)..... 11, 13

Dyke v. Taylor Implement Manufacturing Co.,
391 U.S.216,217,n.3 (1968) 7

Gibbs v. Burke,
337 U.S.773,779 (1948)..... 7

Glover v. Sink,
230 Ga.81,195 S.E.2d 443 (1973).....11

Hegler v. Hegler,
383 So.2d 1134 (Fla.App.1980).....11, 17, 20

Honigsberg v. Goad,
550 S.W.2d 471 (Ky.Sup.Ct. 1976)..... 12

Howard v. Gish,
373 A.2d 1280 (Md.Ct.of App. 1977)..... 12

In the Interest of Wendy Dee Peterson,
364 So.2d 98,99 (Fla.App. 1978)..... 16

In Re McDonald,
252 N.W.2d 67,74 (Mich.App.119)..... 15

Johnson v. Zerbst,
304 U.S. 458 (1938)..... 15

Kalb v. Fuerstein,
308 U.S.433 (1940)..... 15

Kansas City Southern Railway Co. v. Great Lakes Carbon Corp.,
624 F.2d 822 (8th Cir. 1980).....16

Kovacs v. Brewer,
356 U.S.604 (1958)..... 20

Ludden v. Selective Services System,
453 F.2d 645,649 (1st Cir. 1978)..... 16

Matteson v. Matteson,
370 So.2d 677 (Fla.App. 1980) 12, 13

Morris v. Jones,
329 U.S.545 (1947)..... 20

Munday v. Munday,
152 GA.App.232,263 S.E.2d 543 (1979)..... 11

New York ex. rel. Halvey v. Halvey,
330 U.S.610 (1947)..... 17, 20

New York ex. rel. Bryant v. Zimmerman,
278 U.S.63,67 (1928)..... 5

Paltrow v. Paltrow,
37 Md.App.191,376 A.2d 1134 *aff'd* 388 A.2d
547 15

Persons v. Banks,
207 Ga.384,61 S.E.2d 832 (1950)..... 6

Sackler v. Sackler,
47 So.2d 292 (Fla.S.Ct. 1950) 18

Siegal v. Siegal,
No. 53256 (Ill.Sup.Ct. decided January 20, 1981) 12

Smith v. McDaniel,
219 Ga.208,132 S.E.2d 78 (1963).....11

Stembridge v. State of Georgia,
343 U.S.541 (1952) 6

Stoll v. Gottlieb,
305 U.S.165 (1938)..... 16

Stricklin v. Stricklin,
383 So.2d 1183 (Fla.App. 1980) 1, 20

Turley v. Griffin,
508 S.W.2d 764 (Ky.Ct. of App. 1974) 12

Weems v. Weems,
225 Ga.154,166 S.E.2d 352 (1969)..... 4

Constitution, U.S.
Article IV. Section I .....*passim*

United States, U.S.C.
28 U.S.C. §1739A (Parental Kidnaping Prevention
Act of 1980) 7, 21

Florida, Constitution
Art. 5 §5(b) 16

Florida, West's F.S.A.
§26.012 16
§61.133 10
§61.1306 19
§61.1308(1)(a)(1) 14
§61.1314 ..... 9, 14
§61.1326 ..... 18, 19

Georgia, Georgia Code
§24-4545 5
§74-507 ..... 9, 15
§81A-112(b) & (h) 4

Other Authorities
96 A.L.R.3rd 968 9

CONSTITUTIONAL AND STATUTORY PROVISIONS

Federal Statute,
Parental Kidnaping Prevention Act of 1980,
PL 96-611 ..... 1a

Florida Constitution
Article 5 §5(b)

These Circuit Courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus and warrants, certiorari, prohibition and habeas corpus, and all writs necessary and proper to complete exercise of their jurisdiction.

IN THE

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OCTOBER TERM, 1980

No. 79-6853

LEAH LYNN PARRISH WEBB,

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ARGUMENT

I.

RESPONDENT'S CHARACTERIZATION OF THE EVIDENCE FROM THE RECORD AND TRANSCRIPT BELOW IS MISLEADING.

Respondent's statement of the case, particularly his recitation of evidence before the Georgia trial court, is misleading. Rather than the sympathetic response of a parent to an emergency as portrayed by Respondent, the true

evidence paints a more traditional picture of parental "child snatching" by Respondent.

First, it is clear from Respondent's own testimony that he had considered securing physical possession of the minor child, Shane, long in advance of any of the alleged events on February 17th and 18th, 1979. [T.32,60]. In fact, he had stopped paying child support to the Petitioner over one month prior to the alleged "emergency" in anticipation of getting physical custody. [T.32,59,60].

Second, the only evidence of any "emergency" was Respondent's own testimony at the Georgia hearing. There was no corroboration of any of Respondent's assertions concerning receipt of a telex message about the child, nor was there any confirmation by any law enforcement, juvenile court or social service officer, neighbor or other person in Georgia or Florida of the existence of any unusual circumstances which would justify the Respondent's removal of the child from Florida. The absence of any corroborative witnesses is particularly revealing when one considers that Respondent and his attorney had arranged for the date and time for the hearing in Georgia almost two months in advance and could have easily arranged for local or Florida law enforcement, juvenile or social services personnel whom he alleged to have been involved, to testify in verification of his recounting of events.

In addition, Respondent did not appear in or contest Petitioner's action in Florida, where evidence from the very law enforcement officials and social services personnel allegedly consulted would have been readily available. Even at the time of the Georgia trial court hearing, it was Respondent's insistence upon compliance with a local court rule restricting testimony to that of the parties which effectively hindered the Georgia court from having access to

testimony of any witness who could corroborate or rebut the assertions of either party. [T.19,20].

Furthermore, Respondent's own testimony at trial failed to show any real emergency justifying his actions in taking the child back to Georgia. Respondent himself testified that once he reached Gainesville, Florida, he found the minor child with the next door neighbors [T.24,25]; ironically, the same neighbors whom according to Petitioner's testimony she had pre-arranged to care for Shane and his step-sister during her two day trip out of town. [T.89,90]. The same neighbors were cousins of the Petitioner and both knew the destination of Petitioner and how to reach her if any problem arose. [T.87-90,106].

Therefore, Respondent himself did not find the child ill, injured or in danger from lack of adult supervision. There is no evidence to support his assertion in his brief[1] that the minor child or his step-sister were taken to these neighbors by any mode other than the pre-arrangement of the Petitioner. [T.90,106]. Certainly Respondent did not testify at trialnor offer testimony from any witness to show that any law enforcement, juvenile or social work personnel placed Shane and his step-sister with the neighbors. Furthermore, there is no evidence, even if one accepts Respondent's testimony, that he contacted various Florida authorities, that these authorities specifically gave him permission or advised him to take the minor child back to Georgia as alleged in Respondent's brief. Even at trial Respondent only testified that he talked with the juvenile officer from the Alachua County Sheriff's Office and with the Division of Family Services, not that they gave him permission to pick up the child. [T.23,24].

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[1]Brief of Respondent, *Webb v. Webb,* (No. 79-6853, Supt.Ct. of the U.S.) p. 2.

Respondent also mischaracterized Petitioner's appearance before the Georgia court as submitting to the jurisdiction of that court.[2] Nothing is further from the facts. Petitioner objected to both subject matter and personal jurisdiction in her first pleading, the Motion to Dismiss and Answr [J.A.27-31], orally at the Georgia trial court hearing [T.6-7] and again in her Enumeration of Errors and brief before the Georgia Supreme Court [J.A.44]. Making a general appearance and defending on the merits of an action does not constitute submission to or waiver of jurisdiction where jurisdictional objections are specifically and timely raised in the party's first pleading. *Ga. Code* §81A-112(b) & (h), *Weems v. Weems,* 225 Ga.154,166 S.E.2d 352 (1969).

II.

CERTIORARI REVIEW BY THIS COURT IS APPROPRIATE AND TIMELY.

A. Petitioner Adequately and Timely Raised Her Constitutional Issue.

Respondent in his brief has urged this Court to dismiss certiorari on the basis that the Petitioner failed to adequately raise the constitutional issue below.[3] Appellant, however, asserts that she raised the constitutional issue in conformance with standards articulated by this Court and Georgia law.

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[2]*Id.* at 3.

[3]Brief of Respondent, *supra,* at 9.

There appear to be two standards articulated by this Court, as well as by Georgia courts, which must be met in raising a constitutional issue. First, the litigant must raise the issue at the earliest feasible time in the lower court. Second, the constitutional claim must be raised with fair precision. *New York ex. rel. Bryant v. Zimmerman,* 278 U.S.63,67 (1928).

There is no question that Petitioner timely raised the issue. In her Amendment Prior to Entry of Pre-Trial Order filed on April 26, 1979, she requested that the Superior Court of Berrien County, Georgia accord full faith and credit to the order of the Circuit Court of Alachua County, Florida rendered just days before. [J.A.27-31]. When the trial court failed to give the judgment full faith and credit, Petitioner raised the error in her Enumeration of Errors (No.VI) in the Georgia Supreme Court [J.A.45]. Furthermore, despite Respondent's assertions otherwise, Petition did supply the court with argument in support of the Enumeration of Error in Part III of Petitioner's Brief in compliance with *Ga. Code* §24-4545.[4]

Secondly, it is also clear that Petitioner raised the constitutional issue below adequately pursuant to both decisions of this Court and Georgia courts. Although some early cases decided by this Court and state courts required very specific pleading to raise a constitutional issue, more recent case law demonstrates that a litigant is not bound to follow any particular form of words or phrases as long as he brings the federal claim and the grounds therefore to the attention of the state court and in due time. *New York, ex.*

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[4]Appellant's Brief, *Webb v. Webb,* (Sup.Ct., State of Ga., Case No. 35703) at p. 20.

rel. Bryant v. Zimmerman, supra.[5] "If the record as a whole shows either expressly or by clear intendment that this was done, then this Court has regarded the claim as having been adequately presented." *supra.*

In *Braniff Airways v. Nebraska State Board of Equalization and Assessment,* 347 U.S.590 (1954), this Court held that where the airline timely raised and preserved its contention that its property was not taxable in Nebraska because such property had attained no taxable situs in that state, that this Court would consider such contention, even though the airline erroneously relied upon the Commerce Clause to support its claim, and failed to specifically claim protection under the due process clause. "Though inexplicit, we consider the due process issue within the clear intendment of such contention." *supra.*

Since Respondent timely raised her constitutional issue and since Respondent specifically noted the correct provisions of the United States Constitution in requesting that "full faith and credit" be given to the Florida decree, all that is apparently referred to by the Respondent is that Petitioner did not set out the location of the Full Faith and Credit Clause in Article IV, Section I (of the United States Constitution) in her earlier pleadings in state court. There being no full faith or credit clause or similar language in the Georgia Constitution, there could be no mistake made by the Georgia courts as to the source of the Full Faith and Credit Clause in the United States Constitution nor could the Georgia courts have misconstrued the nature of a claim that

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[5]Georgia courts have required a particularized form of pleading constitutional issues, but only where the constitutionality of a state statute or municipal ordinance is brought into question. *Persons v. Banks,* 207 Ga. 384, 61 S.E.2d 832 (1950); *Stembridge v. State of Georgia,* 343 U.S.541 (1952).

full faith and credit be accorded to foreign judgments as being based on Article IV, Section I. Furthermore, it is apparent that in other cases before this Court that the failure to cite to a specific constitutional citation in the lower courts where the nature of the constitutional claim was clear is not fatal to review in this Court.[6]

B. The Passage of the *Parental Kidnaping Prevention Act* should not Impede Review of the Case.

It is clear that the *Parental Kidnaping Prevention Act* of 1980, 28 U.S.C. §1739A passed by Congress and signed into law in December, 1980 is not applicable to this case or any other case involving this issue until July 1, 1981. In reality, that portion of the *Parental Kidnaping Prevention Act* specifically extending full faith and credit to child custody orders seem unnecessary in that there is no language at present in either Article IV, Section I of the *United States Constitution* or in federal law enacted pursuant to this constitutional provision which denies full faith and credit to final custody determinations.

The specific application of the new law to cases such as the one presently before this Court is now largely speculative since the Act's provisions, as well as the Congressional authority to enact this specific legislation, has never been reviewed or interpreted by this or any other court, and such review and interpretation may be many years off.

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[6]*Dyke v. Taylor Implement Manufacturing Company,* 391 U.S. 216,217 n.3 (1968); *Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment,* 347 U.S.590,598-599 (1945); *Gibbs v. Burke,* 337 U.S.773,779 (1948).

Therefore, the most that can be said for the *Parental Kidnaping Prevention Act,* at present, is that it is clearly a strong Congressional statement in support of the extension of the Full Faith and Credit Clause to custody orders rendered pursuant to principles of subject matter and personal jurisdiction present in the Circuit Court of Alachua County, Florida in this case. Such express Congressional sentiment should serve to foster, not impede, review of this case at this time.

III.

THE CIRCUIT COURT OF ALACHUA COUNTY, FLORIDA ASSUMED SUBJECT MATTER JURISDICTION CONSISTENT WITH FLORIDA LAW AND ITS INTERPRETATION BY FLORIDA APPELLATE COURTS.

Respondent and the Amicus Curiae for the National Conference of Commissioners on Uniform State Laws argue for the first time in their briefs before this Court, that the Circuit Court of Alachua County, Florida lacked subject matter jurisdiction to modify the original Georgia custody decree.

Such argument, however, is based upon three erroneous assumptions: first, that the Uniform Child Custody Jurisdiction Act has a uniform construction binding on all state courts whose legislatures adopted its principles; second, that the Uniform Child Custody Jurisdiction Act's provisions create the power of "continuing" or "exclusive" jurisdiction in a court in which an original decree is rendered to modify its own decree regardless of the subsequent domocile of the

parties and the minor child; and, third, that the duty of the trial court to confer with other courts pursuant to *West's F.S.A.* §61.1314 and *Ga. Code* §74-507 is in this case applicable to the Circuit Court of Alachua County, Florida, but not to the Superior Court of Berrien County, Georgia.

A. The Uniform Child Custody Jurisdiction Act Once Adopted by a State is Subject Only to the Binding Interpretation of Its Own Courts Absent Infringement of Constitutional Protections.

Although the Uniform Child Custody Jurisdiction Act is a model act, once its provisions have been adopted by a state, it becomes that state's law and is, therefore, subject only to the binding construction of that state's courts unless principles of the United States Constitution or federal law are infringed. The UCCJA, like all model acts, has been interpreted widely by courts in the adopting states, and many of the interpretations of the various sections are different and occasionally conflicting.[7]

The notes of the Uniform Commissioners interpreting the UCCJA were not adopted by either Florida or Georgia and although often referred to by the Respondent and Amicus Curiae as binding authority are nothing more than a suggested interpretation.

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[7]See 96 *ALR* 3rd 968.

B. The Circuit Court of Alachua County Correctly Interpreted the Provisions of Florida Law in Exercising Subject Matter Jurisdiction.

The UCCJA provisions for modification of a custody decree are set out in Florida Law at *West's F.S.A.* §61.133:

> (1) If a court of another state has made a custody decree, a court of this state shall not modify the decree unless:
>
> (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree, and
>
> (b) the court of this state has jurisdiction.

Pursuant to the actual wording of the above section and its interpretation in Florida, it was easy for the Florida court to determine it had jurisdiction to modify the custody decree at issue. (Since Georgia's UCCJA only became effective January 1, 1979, there was no Georgia case law at that time to which the Florida court could refer to determine its consistency with Florida law.)

First, the Florida court could easily determine that the Superior Court of Berrien County, Georgia had no "continuing" or "exclusive" jurisdiction as the court rendering the original decree to modify the decree at that time. It is abundantly clear in Georgia law that its courts can exercise no continuing jurisdiction to modify, change, or even interpret their own decrees; once a Georgia court renders a custody, divorce or other order of decree, any action to modify, construe, or in any way change the decree must be a new action based on determinations of subject matter jurisdiction, personal jurisdiction, and venue wholly related to the facts of the parties' domocile and service at the time of the new action. *Bragg v. Bragg,* 224 Ga.733,164 S.E.2d

560 (1968); *Smith v. McDaniel,* 219 Ga.208,132 S.E.2d 78 (1963); *Glover v. Sink,* 230 Ga.81,195 S.E.2d 443 (1973); *Anthony v. Anthony,* 212 Ga.356,92 S.E.2d 857 (1956); and *Munday v. Munday,* 152 Ga.App.232,263 S.E.2d 543 (1979).[8]

There is nothing in the actual wording of any provision of the UCCJA adopted in Georgia which has the effect of granting a court in Georgia (or Florida) which renders an initial custody decree authority to exercise "continuing" or "exclusive" jurisdiction to monitor and modify a decree where heretofore the law of the state did not provide such jurisdiction. In fact, Florida courts, which in the past maintained continuing jurisdiction to modify, construe and monitor their custody decrees, have found that this very exercise of "continuing" or "exclusive" jurisdiction is in conflict with the principles of the UCCJA, and, therefore have held such doctrine was repealed by the UCCJA. *Hegler v. Hegler,* 383 So.2d 1134 (Fla.App. 1980), *Detko/ Roberts v. Stikelether,* 370 So.2d 383 (Fla.App. 1979),

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[8]It should be noted that neither Respondent nor Amicus Curiae for the National Conference of Commissioners on Uniform State Laws could point to one Georgia case authority to corroborate their assertion that the Superior Court of Berrien County, Georgia, could exercise continuing or exclusive jurisdiction to modify its custody decrees. Even the Georgia Supreme Court in its opinion below, did not base jurisdiction on such grounds. [J.A.48-51].

Matteson v. Matteson, 370 S.2d 677 (Fla.App. 1980).[9]

In *Hegler,* factually similar to this case, the parties were divorced in Florida in 1973, and the wife was given custody of the two minor children.

In December, 1976, the wife moved to Maryland with the children. In July, 1978, the husband went to Maryland, took one of the children, and returned with the child to Florida. The wife then filed contempt proceedings in Florida alleging violations of the order's custody and support provisions. Appellee filed defenses and a petition to modify custody of both children. The Florida trial court found it had jurisdiction to modify custody because it was the court of "original jurisdiction" in the case and gave custody of the children to the husband. The Florida District Court on appeal found that Maryland had become the children's home state and held that "the fact that the original decree was entered in Florida does not prevent loss of jurisdiction if the children have resided elsewhere for six months." The court further

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[9]Also, note a similar interpretation has been adopted in Maryland, Kentucky and recently Illinois. In *Howard v. Gish,* 373 A.2d 1280 (Md.Ct. of App. 1977) the court noted that the UCCJA makes it plain that "adherence to the continuing jurisdiction rule" are to the extend of any inconsistency with the [Act] no longer of controlling authority. *Turley v. Griffin,* 508 S.W.2d 764 (Ky.Ct. of App. 1974) acknowledged that notwithstanding the fact its court rendered the final judgment for dissolution, "the provisions of the Act clearly provide that after [the mother] and the child moved to Indiana this state was divested of jurisdiction to make a child custody determination as the home state." As noted in a subsequent Kentucky case, *Honigsberg v. Goad,* 550 S.W.2d 471 (Ky.Sup.Ct. 1976) the court rendering the divorce "cannot retain indefinite jurisdiction over the custody of the children." In *Siegal v. Siegal,* No. 53256 (Ill.Sup.Ct., decided January 20, 1981), Illinois also found the exercise of continuing jurisdiction to modify custody inconsistent with UCCJA principles when Illinois was no longer the home state of the minor children.

found that the UCCJA specifically supercedes prior law in Florida recognizing custody decrees as interlocutory in nature and subject to the continuing jurisdiction of the court rendering the original decree. *Id.* at 1136.

The facts in *Detko/Roberts v. Stikelether, supra,* were also similar to the present case. The parties were divorced in Florida in 1976. The minor child whose custody was awarded to the mother moved with her mother to Alabama thereafter. In 1977, the father petitioned in a Florida court for visitation rights, and the Florida court granted visitation rights. Thereafter, the mother petitioned in Alabama for a change in the visitation rights awarded to the father. Prior to the Alabama hearing, the father took the child to Florida and petitioned for custody. The mother counterclaimed for writ of habeas corpus and asked for dismissal of the petition. The trial court in Florida found it had subject matter and personal jurisdiction, and the mother filed an interlocutory appeal. The Florida District Court, on appeal, reversed the lower court's finding of jurisdiction to modify, holding that at the time the trial court in Florida commenced dealing with the post divorce visitation rights and custody, the mother and the minor child had been residents of Alabama for more than six months. Therefore, pursuant to *West's F.S.A.* 61.1308 1(a)(1), Alabama was the home state and alone had jurisdiction.

The Florida District Court in *Matteson v. Matteson, supra,* made the same determination, finding that simply because the original dissolution and subsequent modification was in Florida does not mean Florida retains jurisdiction where the children and the wife have resided in New York for over three years, and where the New York court was willing to assume responsibility for modification of custody.

Secondly, once the Florida court determined the Georgia court no longer retained any jurisdiction to modify its

custody order, it was easy to determine that the Florida court had jurisdiction to modify as the child's home state. In the minor child's life in six years he had resided in Florida over four years; furthermore, at the time of his removal from Florida, he had resided in that state fifteen of the seventeen months from the date of the original divorce and custody decree. [J.A.11-12]. Clearly, there is no doubt that Florida was both the child's home state and the state having the most significant connection with him pursuant to UCCJA principles incorporated in Florida law at *West's F.S.A.* §61.1308.

C. The Circuit Court of Alachua County, Florida was not Required by Florida Statutes to Decline Jurisdiction where a Proceeding was Commenced in Georgia over Two Weeks after it Accepted Jurisdiction of the Case.

Floria statutes, codified at *West's F.S.A.* §61.1314 require that a Florida court "shall not exercise its jurisdiction" under the provisions if, "*at the time the petition is filed,* a proceeding concerning the custody of the child was pending in a court of another state. . .". (emphasis supplied) As is abundantly clear from the record, the petition in Florida was filed on March 8, 1979, and the petition in Georgia was not filed until March 23, 1979. Therefore, there was no Georgia proceeding pending at the time of the Florida court's initial exercise of jurisdiction when Petitioner's Petition to Establish, Enforce and Modify a Foreign Judgment was filed, the Motion for Emergency Restraining Order was considered, and the Restraining Order was signed.

There is nothing in the entire UCCJA which requires a court which exercises jurisdiction in substantial conformity

with the Act to dismiss jurisdiction simply because a court in a second state subsequently asserts jurisdiction. In fact, under the same UCCJA principles codified at *Ga. Code* §74-507, the Georgia court, having determined by Petitioner's Answer that a proceeding was pending in Florida at the time Respondent filed his Complaint in Georgia, was the only court under the duty pursuant to this UCCJA provision to refuse to assert or to dismiss jurisdiction. *Paltrow v. Paltrow,* 37 Md.App.191,376 A.2d 1134, *aff'd* 388 A.2d 547, *In Re McDonald,* 74 Mich.App.119,253 N.W.2d 678.

D. The Florida Court's Assumption of Subject Matter Jurisdiction, being Consistent with Florida Law Interpreting the UCCJA is Not Subject to Collateral Attack in this Court.

In the case of a collateral attack on a domestic judgment of a court of general jurisdiction, every reasonable presumption will be indulged in support of the regularity and validity of the judgment. *Kalb v. Fuerstein,* 308 U.S.433 (1940); *Johnson v. Zerbst,* 304 U.S.458 (1938). Furthermore, a default judgment is as conclusive against collateral impeachment as any other form of judgment.

As previously demonstrated, Respondent and one amicus curiae have argued not that the Circuit Court of Alachua County, Florida erred in the exercise of subject matter jurisdiction based upon Florida case law interpreting its own statutory version of the UCCJA, but rather that the Florida trial court erred in not applying an interpretation of the UCCJA endorsed by some commentators of the UCCJA. Certainly it would have been appropriate for Respondent on appeal from the Florida order in that state's appellate courts

to urge that Florida case law interpreting UCCJA provisions be overturned as inconsistent with various commentators on the Act, but having failed to urge this argument before the Florida courts on appeal, Respondent cannot now utilize this argument to collaterally attack the Florida order before this Court on lack of subject matter jurisdiction.

Although the absence of subject matter jurisdiction may in certain cases render a judgment void, this voidness occurs only where there is a plain usurpation of power, when a court wrongfully extends its jurisdiction beyond the scope of its authority. *Stoll v. Gottlieb,* 305 U.S.165 (1938). Voidness does not occur when there is simply an error in interpreting a statutory grant for the exercise of jurisdiction. *Ludden v. Selective Services System,* 453 F.2d 645,649 (1st Cir. 1978).

It is unchallenged that the Circuit Court of Alachua County, Florida was a court having plenary jurisdiction in matters of modification of child custody orders.[10] Therefore even if one assumed, for the sake of argument only, that the Floria court erred somewhat in interpreting the statutory grant of jurisdiction pursuant to the UCCJA based on the facts and residence of the parties, such error is nevertheless not equivalent to that court's acting with a total want of jurisdiction. The error in interpreting the UCCJA provisions would have made the Florida order attackable on direct appeal, but would not render the judgment a complete nullity and subject to collateral attack. *Chicot County Drainage District v. Baxter State Bank,* 308 U.S.371,376-377 (1940), *Nobel v. Union River Logging Co.,* 147 U.S.165 (1893), *Kansas City Southern Railway Co. v. Great Lakes Carbon Corp.,* 624 F.2d 822 (8th Cir. 1980).

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[10]Florida Constitution, Art. 5, *West's F.S.A.* §26.012. Also see *In the Interest of Wendy Dee Peterson,* 364 S.2d 98,99 (Fla.App. 1978).

In summary, the Circuit Court of Alachua County, Florida exercised subject matter jurisdiction consistent with Florida appellate court's interpretation of the Uniform Child Custody Jurisdiction Act. Even if, however, the Circuit Court misinterpreted Florida law in assuming jurisdiction based on the particular set of facts involved in this case, such an error in interpretation does not render the order void and subject to collateral attack where the court had general jurisdiction over child custody matters.

IV.

THE FLORIDA ORDER HAD THE REQUISITE FINALITY FOR ENTITLEMENT TO FULL FAITH AND CREDIT IN GEORGIA COURTS.

A. The UCCJA, When Adopted in Florida, Changed Previous State Law as to Finality of Custody Decrees.

Respondent and Amicus Curiae for the National Conference of Commissioners argue that the Florida courts, now as well as at the time of *New York ex. rel. Halvey v. Halvey,* 330 U.S.610 (1947), treat custody decrees as interlocutory and may modify such decrees from time to time as the welfare of the child requires.

As stated previously in Petitioner's Main Brief, the UCCJA, once adopted in Florida has, however, superceded and repealed the prior law of Florida explained and cited in the briefs of Respondent and amicus curiae. *Hegler v. Hegler,* 383 So.2d 1134, 1136 (Fla.App. 1980). UCCJA provisions specifically provide that a custody decree is

"conclusive *as to all issues of law and fact and as to the custody determination made...*". (emphasis added). *West's F.S.A.* §61.1326. Therefore, in absence of or in addition to findings of law and fact, specifically articulated in a custody order, the custody determination in and of itself also has a conclusive or res judicata effect.

B. The Florida Custody Order was Res Judicata as to Findings of Fact and Law and as to the Custody Determinations Made.

Respondent and Amicus Curiae for the National Conference of Commissioners on Uniform State Laws apparently argue that the Florida order was not entitled to full faith and credit in Georgia because the Florida court issuing the order did nothing more than recognize and enforce the existing Georgia decree.

The record from the Circuit Court of Alachua County, Florida shows otherwise. First, the Florida court received evidence from Petitioner in the form of pleadings, affidavits and oral testimony respecting the residence of the parties, the residence of the child during almost his entire life and evidence concerning the removal of the child from Florida without the consent or knowledge of Petitioner. [J.A.6-10,11-12,17-18,25-26].

Secondly, the Florida court, established the Georgia decree as a judgment of the Florida court, both pursuant to authority under the UCCJA, but also pursuant to Florida law relating to the domestication of foreign decrees.[11] But,

[11]Florida law has long provided that a foreign judgment can be domesticated as a decree of the State of Florida after notice and a hearing. Furthermore, with judgments having a future effect, either party may request in the same proceeding the modification of the judgment as it relates to future payments or effects. Once domesticated the foreign judgment becomes the judgment of the Florida court and is entitled to enforcement by legal and equitable means. *Sackler v. Sackler,* 47 So.2d 292 (Fla.S.Ct. 1950).

the Florida court did not stop there.

In addition to hearing evidence and establishing the Georgia decree, the Florida court made findings of fact and conclusions of law. The court determined that it had jurisdiction over the parties and subject matters of the action, that the Petitioner and minor child were permanent, bona fide residents of the State of Florida, not withstanding the minor child's physical presence then in Georgia, and that it was in the best interests of the child that the visitation rights in the Georgia decree be modified. [J.A.25-26].

Last and most important, the Florida court also made two custody determinations.[12] First, the court modified Respondent's visitation rights by setting forth a specific schedule for the exercise of visitation. Second, the court specifically ordered that the remainder of the provisions in the previous Georgia judgment, including Petitioner's award of custody of the minor child "*shall remain* in full force and effect." [J.A.26] (emphasis added). The court thereby made a present determination that the minor child was properly in the custody of Petitioner and should remain there based on facts existing at that time.

Thus, it is apparent that the Florida court did far more than simply recognize and enforce the 1977 Georgia divorce decree. The Florida order made two independent custody determinations, which along with the order's findings of fact and conclusions of law were entitled to conclusive and binding effect by Florida law.[13]

The fact that the Florida court issued the order upon the

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[12]"custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; *West's F.S.A.* §61.1306.

[13]*West's F.S.A.* §61.1326.

default of the Respondent does not reduce the order's conclusive effect. As stated by this Court in *Morris v. Jones,* 329 U.S.545 (1947), a judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata in the absence of fraud or collusion, even if obtained upon default.

Furthermore, unlike the normal default judgment, the court here clearly demonstrated that it exercised independent judgment concerning the best interest of the child; the Florida order did not simply parrot Petitioner's prayer for relief, particularly those for restrictions on visitation, but rather spelled out in its own terms its holdings including a specific and liberal visitation schedule for Respondent. [J.A.25,26].

C. The Custody Determination Made by the Florida Court could not be Modified without Evidence of a Substantial Change of Conditions.

As articulated by this Court in *Halvey*[14] and *Kovacs v. Brewer,*[15] the state of the forum has as much leeway to disregard the judgment, to qualify it or to depart from it as does the state where it was rendered. Since the enactment of the UCCJA in Florida, Florida courts may modify a custody order only upon evidence of a substantial change of conditions affecting the welfare of the child since the time of the previous order.[16]

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[14]*New York ex. rel. Halvey v. Halvey,* 330 U.S.610 (1947).

[15]*Kovacs v. Brewer,* 356 U.S.604 (1958).

[16]*Hegler v. Hegler,* 383 So.2d 1134, 1136 (Fla.App. 1980), *Stricklin v. Stricklin,* 383 So.2d 1183 (Fla.App. 1980).

The Superior Court of Berrien County, Georgia, therefore, had leeway only to modify custody based on evidence of changed circumstances since the Florida order rendered three weeks prior to the Georgia hearing. Since there was no evidence of changed circumstances introduced by Respondent relating to that three week period, the Georgia court erred in not granting full faith and credit to the Florida order.

CONCLUSION

The question presented for review has been timely and adequately raised in the courts below to sustain the acceptance of the writ of certiorari by this Court. Furthermore, the passage of the Parental Kidnaping Prevention Act of 1980, P.L. 96-611, not being effective until July 1, 1981, should not affect the grant of review by this Court in the present case.

It is clear that full faith and credit should have been accorded to the custody order of the Circuit Court of Alachua County, Florida. The Florida court had both subject matter jurisdiction pursuant to Florida law and personal jurisdiction over the parties. In addition, the custody order rendered had the requisite finality for the application of the Full Faith and Credit Clause mandates.

Therefore, the grant of the writ of certiorari by this Court should be sustained, and this Court should reverse the

decision of the Supreme Court of Georgia which failed to accord full faith and credit to the child custody order of its sister state, Florida.

Respectfully submitted,

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APPENDIX

PARENTAL KIDNAPING PREVENTION ACT OF 1980 PL 96-611

[Wallop unprinted amendment No. 1937 to HR 8406, establishing a national system for locating parents and children who travel from one jurisdiction to another and are concealed in connection with disputes between persons claiming rights of custody and visitation of children under the laws.]

SHORT TITLE

Sec. 6. Sections 6 to 10 of this Act may be cited as the "Parental Kidnaping Prevention Act of 1980."

FINDINGS AND PURPOSES

Sec. 7. (a) The Congress finds that

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

(c) The general purposes of sections 6 to 10 of this Act are to—

(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

(3) facilitate the enforcement of custody and visitation decrees of sister States;

(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships of the child;

(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATION

Sec. 8. (a) Chapter 115 of title 28, United States Code, is amended by adding immediately after section 1738 the following new section:

§1738A. Full faith and credit given to child custody determinations

"(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

"(b) As used in this section, the term—

"(1) 'child' means a person under the age of eighteen;

"(2) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

"(4) 'home State' means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

"(5) 'modification' and 'modify' refer to a custody determiination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

"(6) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

"(7) 'physical custody' means actual possession and control of a child; and

"(8) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if —

"(1) such court has jurisdiction under the law of such State; and

"(2) one of the following conditions is met:

"(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

"(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is an issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisidction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of

subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

"(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

"(1) it has jurisdiction to make such a child custody determination; and

"(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

"(f) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination."

(b) The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738 the following new item:

"1738A. Full faith and credit given to child custody determinations."

(c) In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

(1) afford priority to proceedings for custody determinations; and

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

(b) the court determines it is appropriate.

No. 79-6853
IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

vs.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

AMICUS CURIAE BRIEF OF AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

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TOPICAL INDEX

	Page
Table of Authorities	iii
PREFATORY STATEMENT	1
STATEMENT OF THE CASE	2
AMICUS CURIAE RELIES UPON PETITIONER'S STATEMENT OF THE CASE AND THE RECORD BEFORE THIS HONORABLE COURT	2
THE PROBLEM	2
THE JURISDICTIONAL QUESTION -- FORMER SUPREME COURT CASES	6
PRIOR SUPREME COURT CASES	8
THE UNIFORM CHILD CUSTODY JURISDICTION ACT	14
THE CASE AT BAR	20
ISSUE	22

ARGUMENT 24

A CUSTODY DECREE OF A COURT WHOSE JURISDEICTION IS SUPPORTED BY THE ESTABLISHED "HOME STATE" PRINCIPLE, AS EMPHASIZED BY THE UNIFORM ACT, SHOULD RECEIVE THE PROTECTION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION 24

CONCLUSION 28

TABLE OF AUTHORITIES

Cases	Page
Coe v. Coe (1948) 334 U.S. 378	24
Ford v. Ford (1962) 371 U.S. 187	12
Halvey v. Halvey (1947) 330 U.S. 610	5, 8, 10, 11, 28
Kovacs v. Brewer (1958) 356 U.S. 604	10, 11
May v. Anderson (1953) 345 U.S. 528, 73 S.Ct. 842	5, 8, 10
Pate v. Stout (1953) 209 Ga. 786, 75 S.E.2d 748	8
Pate v. Stout (1954) 347 U.S. 968	8
Sampsell v. Superior Court (1948) 32 Cal.2d 763, 197 P.2d 739	6
Sherrer v. Sherrer (1948) 334 U.S. 343	24
Stout v. Pate (1953) 120 Cal.App.2d 699, 261 P.2d 788	7, 8

Stout v. Pate (1954)
347 U.S. 968 8

Williams v. North Carolina (1942)
317 U.S. 287 24

Statutes

Georgia Code,
Sections 74-507 and 74-507c 22, 23

Section 74-513 25

Florida Civil Practice & Procedure,
Section 61-326 25

Articles and Texts

Bodenheimer, The Uniform Child Custody Jurisdiction Act, 3 Fam. L.Q. 304 (1969) and The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vanderbilt Law Review 2107 (1969) 15

Ratner, Child Custody in a Federal System, 62 Mich. L.Rev. 795 (1964) 15

Ratner, Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S.Cal. L.Rev. 183 (1965) 15, 19

Watson, The Children of Armageddon: Problems of Custody Following Divorce, 21 Syracuse Law Review 55, 1970 and Psychiatry for Lawyers 19

Comment, Legislative Opportunity for Oregon: The Uniform Child Custody Jurisdiction Act, 7 Willamette L.J. 498 (1971) 15

Family Advocate, Vol. 3, No. 2 (1980) page 6 16

Restatement (Second) Conflict of Laws, Section 117 (1957) 7

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AMICUS CURIAE BRIEF OF AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

PREFATORY STATEMENT

The American Academy of Matrimonial Lawyers is a recognized nonprofit organization, consisting of Family Law and Matrimonial Specialist Lawyers and Judges throughout the United States, whose stated purpose and objective is to "encourage the study, improve the practice, elevate the standards and advance the

cause of matrimonial law, to the end that the welfare of the family and society be preserved."

This Amicus Curiae Brief is being filed in support of the resolution of issues before this Honorable Court that are of far-reaching importance to society at large, and more particularly, to the innocent children who are victims of their parents' separation or divorce.

STATEMENT OF THE CASE

AMICUS CURIAE RELIES UPON PETITIONER'S STATEMENT OF THE CASE AND THE RECORD BEFORE THIS HONORABLE COURT.

THE PROBLEM

At best, the judicial function in child custody disputes is difficult and delicate when the parents after separation remain in the same community or state. When the parents move or live in different states or countries, the problems are

compounded, serious and frustrating. It is self-evident that the movement of our citizens and families has been facilitated by modern transportation facilities, including the automobile and jet plane. Parents and children travel across countries, continents and states in a matter of hours. With increasing frequency in our Courts today, as in the recent past, parents, in their natural desire to obtain custody of their children, or to avoid the acrimony and hostility of a Court fight, and without funds or economic means to engage in litigation, simply frustrate or attempt to defeat the other parent by removing or concealing the child or children of their marriages in a state or community out of the reach of the other, where jurisdictional intervention is sought.

Custody decrees, unlike money or property judgments, are unique in that traditionally they have been modifiable on the basis of subsequent changed circumstances affecting the welfare and best interests of children. Thus, the fundamental

premise that the primary concern of the local Court is the best interest of the child has often conflicted with rules respecting other states' judgments. Assuming that a local Court has jurisdiction based on physical presence of a child, a frequent problem which has arisen continuously is whether to give "full faith and credit" or comity to a sister state's order or judgment. Should the local Court refuse to re-examine the merits of the prior determination, or should it exercise its own discretion in protecting the welfare of the child within its jurisdiction?

Neither the Courts of the individual states, nor this Court have ever articulated principles upon which to base reasonable, workable, jurisdictional rules or guidelines in the best interests of the child. The drafting and passage of the Uniform Child Custody Jurisdiction Act was the ultimate product to assist the states in reaching improved and more reasonable methods of dealing with the jurisdictional disputes.

Justice Jackson in his dissenting opinion of May v. Anderson, 345 U. S. 528, 73 S. Ct. 842 (1953), alluded to the problem in this manner:

> "A state of law such as this, where possession apparently is not merely nine points of the law, but all of them, and selfhelp the ultimate authority, has little to commend it in legal logic or as a principle of order in a federal system." (May v. Anderson, supra, p. 541)

Or, as was stated by former Justice Rutledge, in his concurring opinion of Halvey v. Halvey, 330 U. S. 610 (1947), p. 619:

> "The result seems unfortunate in that apparently, it may make possible a continuing round of litigation over custody, perhaps also an abduction between alienated parents. . . . I think that the controlling consideration should be the best interests of the child, not only for disposing of such cases as a matter of policy . . . but also of formulating federal policies of full faith and credit as well as of jurisdiction and due process in relation to such dispositions." (Emphasis added.)

THE JURISDICTIONAL QUESTION -- FORMER SUPREME COURT CASES

Reference to a landmark case, originating from California, Sampsell v. Superior Court (1948) 32 Cal. 2d 763, 197 P. 2d 739, and prior Supreme Court cases, are helpful in context to direct this Court's attention to the urgent need of this Court to clarify its prior decisions and require full faith and credit to be given to the judicial proceedings of sister states' custody decrees including by implementation and application of the Uniform Child Custody Jurisdiction Act.

In Sampsell, supra, the Supreme Court of California declared that the state where the child is domiciled, the state where the child is physically present, and the state where the defendant is legally present have concurrent authority to make or modify a custody decree because each has an interest in the child's welfare, but one state may defer to the authority of another with

a more substantial interest.

Restatement (Second) Conflict of Laws, Section 117, (1957), adopted this position:

The inherent difficulty with the "Sampsell - Second Restatement Position" was that it did not really assist in reaching enforceable postions. Usually no other state has concurrent jurisdiction when a child is taken to a new state by a parent, because both are domiciled and physically present there. If, for example, the mother leaves with the child and a nondeparting father in a father-domiciled jurisdiction, seeks a home state decree, when he petitions for enforcement, the state where the child is physically present could claim a paramount interest. In such situation, the Court where the child is physically present after giving the prior decree respectful consideration, could make a de novo custody determination.

For example, when divergent parents each commenced separate actions, in separate states, conflicting decrees were the result. In Stout v.

Pate (California) 120 Cal. App. 2d 699, 261 P. 2d 788 (1953), and Pate v. Stout (Georgia) 209 Ga. 786, 75 S. E. 2d 748 (1953), the parties litigated in two states and each decision favored the resident parent. The Supreme Court discreetly denied certiorari (Stout v. Pate (1954) 347 U. S. 968, and Pate v. Stout (1954) 347 U. S. 968).

PRIOR SUPREME COURT CASES

In Halvey v. Halvey (1947) (380 U. S. 610), the Supreme Court affirmed a New York order which had modified a Florida custody award in favor of the mother. When the mother claimed the child by habeas corpus in New York, the New York Court modified the Florida decree by giving the father visitation rights and possession of the child during vacations. The court denied that there was violation of the full faith and credit clause on the narrow ground that Florida law would have permitted this modification and "what Florida could do by modifying the decree, New York may

do." The court refrained from examining the applicability of the full faith and credit clause to custody decrees as such.

In May v. Anderson (1953) (345 U. S. 528), after the mother had declared her intention to keep the children in Ohio where she had temporarily taken them, the father obtained a custody decree in Wisconsin, the state of the family home, and retrieved them. The mother was originally personally served in Ohio, but did not appear in the Wisconsin action. Five years later the mother had possession of the children in Ohio during a visit, and the father petitioned in Ohio for habeas corpus. The Ohio courts gave full faith and credit to the Wisconsin decree and returned the children to the father. The Supreme Court reversed. Speaking through Justice Burton, the Ohio judgment was reversed on the ground that the rendering court, "certainly as against Ohio" had not had the required in personam jurisdiction. "We have before us the question

whether a court of a state where a mother is neither domiciled, resident nor present, may cut off her immediate right to the . . . custody . . . of her minor children without having jurisdiction over her in personam."

Justice Frankfurther rejected an implication that full faith and credit applied to custody decrees of sister states by stating that: "The child's welfare in a custody case has such a claim upon the state that its responsibility is obviously not to be foreclosed by a prior adjudication reflecting another state's discharge of its responsibility at another time."

In Kovacs v. Brewer (1958) (356 U. S. 604) the court did not help clarify the problems of Halvey or May v. Anderson. In Kovacs, the child had lived in North Carolina with its paternal grandparents for three years, pursuant to a valid New York custody decree. The mother petitioned for modification in New York, where the father and grandfather contested her claim without specific

objection to jurisdiction. The New York court modified the decree so as to give the mother custody. The child, after being kept in North Carolina contrary to the New York decree, was the subject of enforcement proceedings by the mother 14 months later in North Carolina. The North Carolina courts decided that the child should remain with the grandparents. The Supreme Court neither affirmed nor reversed. It simply held on the authority of Halvey, that full faith and credit would not foreclose a North Carolina modification based on a subsequent change in circumstances, as permitted by New York law. It remanded to the state court for clarification whether the modification rested on both prior and subsequent events or solely on the latter. The court reversed for future consideration as to whether full faith and credit would apply to the facts of the case at bar.

Justice Frankfurter in Kovacs, dissented from the implication that the New York decree

was entitled to full faith and credit in the absence of changed circumstances, and asserted that the state where the child is physically present can decide it's custody without being bound by a prior decree.

The Supreme Court also avoided consideration of the effect of the full faith and credit clause in Ford v. Ford (1962) (371 U.S. 187).

In Ford, a mother removed the minor children from the family home in North Carolina to Virginia. The father petitioned for custody in the latter state (Virginia). The parents then reached an agreement by the terms of which custody of the children was given to the father for the school year and to the mother during vacations. On the basis of this private agreement, the Virginia Court dismissed the proceedings. Nine months later, the mother asked for custody in South Carolina, shortly after taking the children there during a summer vacation; the father consented without objection to the

jurisdiction. A lower Court found no change in circumstances but refused to treat the Virginia dismissal as a res judicata order, fixing custody in accordance with the agreement, and gave the children to the mother for the school year and the father during vacations. The State Supreme Court reversed on the ground that the dismissed order was res judicata in Virginia in the absence of changed circumstances, and therefore entitled to full faith and credit in South Carolina.

The United States Supreme Court did not have to decide whether the dismissed order would have been entitled to full faith and credit if made res judicata by Virginia Law. Noting that private agreements are not controlling in custody proceedings, the Supreme Court concluded that Virginia would not treat the order as res judicata because neither the evidence, the agreements, nor the welfare of the child had been considered by the Court. It therefore held that South Carolina could make an independent custody determination.

The result was that the Supreme Court had no difficulty in avoiding a consideration of the effect of full faith and credit on custody decrees and was spared the necessity of examining the due process requirements for initial custody jurisdiction by the father's acquiescence in the jurisdiction in the South Carolina Court.

THE UNIFORM CHILD CUSTODY JURISDICTION ACT

The inevitable result of the conflicting and confusing decisions of both the Supreme Court and State Court decisions left lawyers and their clients in a constant state of uncertainty and dilemma. Neither the parents nor their lawyers could have the status of the children of separated or divorced parents determined with reasonable certainty. The children were the subject of an incessant tug of war, or "seize and run" actions. Therefore, initiative by other means was crucial.

The Uniform Child Custody Jurisdiction Act was conceived and adopted by the National Conference of Commissioners on Uniform State Laws in July, 1968, and approved by the American Bar Association in August, 1968.[1/]

The history of the Uniform Child Custody Jurisdiction Act and its promulgations strongly urged recognition and articulation of certain jurisdictional goals, which included:

1. A fair place of trial for the litigants.

2. A custody determination by the Court most likely to decide correctly, i.e. by the Court having maximum access to the relevant evidence.

1/ See Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vanderbilt Law Review 2107 (1969) and Bodenheimer, The Uniform Child Custody Jurisdiction Act, 3 Fam. L.Q. 304 (1969). See also Ratner, Legislative Resolution of the Interstate Child Custody Problem: A reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183 (1965); Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795 (1964) and Comment, Legislative Opportunity for Oregon: The Uniform Child Custody Jurisdiction Act, 7 Williamette L. J. 498 (1971).

3. The discouraging of abduction, removal, retention or concealment of a child.

4. The avoidance of jurisdictional competition and conflicts with Courts of other states.

5. The avoidance or relitigation of custody decisions of other states.

6. The promotion of cooperation with the Courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interests of the child.

As a recent inquiry, 46 states have adopted the Uniform Act.[2/]

A principal purpose of the Uniform Act was to reduce the discretionary powers of courts to assume jurisdiction, if there is only a minimal contact between the child and the state. This is accomplished by the use of a key basis for jurisdiction. Under the Act, a court has jurisdiction under the Act, if (a) it is located in the "home

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2/ Family Advocate, Vol. 3, No. 2 (1980), page 6.

state" of the child,[3/] or (b) has become the home state or had been the home state within six months prior to the action and the child is now absent but a parent remains, or (c) it is in the best interests of the child that the court assume jurisdiction because the child and at least one contestant have significant contact with the state and there is substantial evidence relating to the child's future prospects available in the state. The Section further provides that mere presence of the child will not vest jurisdiction, excepting, of course, the state's power to exercise jurisdiction as parens patriae to provide for the needs of neglected or abandoned children within the state.

There was reason to adopt the "home state" provision in the act. An established home forum is probably consistent with the reasonable

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3/ "Home state" is defined in Sec. 3(5) of the Act as "the state in which the child immediately preceding the time involved lived with his parents, a parent, or person acting as a parent for at least six consecutive months."

expectations of each parent and not inconvenient for the nonresident. Often that parent has previously lived there, and, in any event, has had continuing significant contact at the place where his or her child last lived for a substantial period. The state where a child is physically present may always remove the child from the control of a person who is there abusing it, but that state is not by reason of such general authority necessarily the best venue for litigating a custody dispute between the resident and nonresident parent of any child there present.

The theory of the Uniform Act was in part based upon acknowledged facts of life. Most American children are probably integrated into an American community after living there six months. This period of residence provides a reasonable criterion for identifying the established or home state. A difficult factual determination is thereby avoided, delay in the assertion of custody claims are discouraged, and the area of

jurisdictional uncertainty is thereby reduced.[4/]

There is sound reason for the concept. The interstate custody dispute has created acute problems for children despite the psychiatric imperative that demands the optimum of stability in a child's environment.[5/] The last established home acquired after a custody decree is usually the most appropriate forum for litigating modification as long as the child or parent is living there. That forum usually has the greatest access to evidence of a subsequent change in circumstances, and is probably consistent with the reasonable expectation of both parents. In the concept of the Act, if the noncustodial parent removes the child

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4/ See Leonard G. Ratner, "Legislative Resolutions of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act," 38 So. Cal. Law Review II, 1965 at page 186.

5/ See Watson, "Psychiatry for Lawyers," and see generally Watson, "The Children of Armageddon: Problems of Custody Following Divorce," 21 Syracuse Law Review 55, 1970.

to another state, jurisdiction should not shift unless the custodial parent takes no action until the child acquires a newly established home, or when the noncustodial parent and child cannot be located in time to prevent the creation of such a home. Under these circumstances, the second state should return the child to the home of the custodial parent without considering the noncustodial's request for modification if the prevailing parent was diligent in seeking enforcement and the prior home state remains a fair venue for litigating the modification issue.

THE CASE AT BAR

The resolution of the issues presented by the case at bar should not be left without appropriate intervention and clarification by this court of the rule of jurisdictional law applicable to child custody disputes. We are concerned with the manner in which the Georgia Supreme Court bypassed the mother's argument that the pendency

of the Florida proceedings pre-empted Georgia jurisdiction. The Georgia Supreme Court, in its Decision, observed the following:

> "(2) The mother also argues that the pendency of the Florida action pre-empted Georgia jurisdiction. The action was pending in Florida at the time the father filed his suit, and while the father did not properly inform the Georgia court of this fact, this information was fully supplied to the Georgia court by the mother in her motion to dismiss. This fact placed a duty upon the trial court to confer with the Florida court with a view toward determining the appropriate forum. Code Ann. § 74-507. This was not done. Correspondingly, the Florida court, having notice in the mother's pleadings that an action might be pending in Georgia, was under a duty to confer with the Georgia court. There is nothing in the record before this court to indicate any effort on the part of the Florida court to fulfill this duty prior to entering its final judgment.
>
> Among the primary purposes of the Uniform Child Custody Jurisdiction Act is to avoid overlapping adjudication and to prevent judgment races. In this case, neither state made a contribution toward that goal.
>
> The Georgia court exercised its jurisdiction with knowledge of the case in Florida. The Florida court entered its final order with notice that an action

might be pending in Georgia. Neither court consulted the other."
(Emphasis added.)

Thus, we have two state courts, each under a duty to confer with the other to determine the appropriate forum, but failed or refused to do so. The Georgia Court acted unilaterally on the premise that the situation presented "an emergency situation."

ISSUE

The critical issue before this Court is:

Did the Georgia Court commit prejudicial error in its failure to accord full faith and credit and res judicata effect to the Florida Decree of April 18, 1979, which vested custody of the minor child in the mother?

In deciding the foregoing issue, the Uniform Act (Georgia Code, Sec. 74-507) provides:

> "A court of this state shall not exercise its jurisdiction under this title if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state

> exercising jurisdiction substantially in conformity with this title, unless the proceeding is stayed by the court of the other because this state is a more appropriate forum or for other reasons."

The Act further provides (Georgia Code, Section 74-507c):

> "If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceedings and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in a more appropriate forum and that information is exchanged in accordance with the Sections 74-520 and 74-523."

The Georgia trial court did not stay proceedings and communicate with the Florida court to the end that the custody issue might be litigated in the most appropriate forum.

ARGUMENT

A CUSTODY DECREE OF A COURT WHOSE JURISDICTION IS SUPPORTED BY THE ESTABLISHED "HOME STATE PRINCIPLE, AS EMPHASIZED BY THE UNIFORM ACT, SHOULD RECEIVE THE PROTECTION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION.

The full faith and credit clause of the United States Constitution has long compelled interstate recognition of a divorce decree by a plaintiff's domiciliary state.[6/] A finding of domicile in other jurisdictions is binding in the forum upon a defendant who participated in the proceedings.[7/]

The Uniform Act provides for res judicata and binding effect when a custody decree is involved, in the following manner:

6/ See Williams v. North Carolina (1942) 317 U. S. 287.

7/ Coe v. Coe (1948) 334 U. S. 378; Sherrer v. Sherrer (1948) 334 U. S. 343.

> "A custody decree rendered by a court of this state which had jurisdiction under Section , binds all parties who have been served in this sate or notified in accordance with or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law."
> (Florida Civil Practice & Procedure, § 61-326; see also Georgia Code, Section 74-513.)

In the case at bar, father was served in the Florida proceedings and was given opportunity to be heard. Notwithstanding a prior Florida custody decree in the "home state" of the child, the Georgia Court acted without considering the res judicata-binding nature of the Florida decree. We submit that the Georgia Court committed error.

Amicus Curiae submits that the Constitutional policies of res judicata and interstate respect demand full faith and credit protection in the adjustment of parent-child relationships,

as well as in the dissultion of the marriage relationship itself.

To discourage abduction, or concealment of children, to limit the waste in individuals' social resources involved in relitigation, to provide greater psychological stability for the child, to protect the reasonable expectations of parents, and to promote federal cohesion, each state should accept and enforce the valid custody determinations of every other state, without readjudicating the previously decided issues.

Although a Court with jurisdiction to modify a decree necessarily has broad discretion, application of the full faith and credit-res judicata principles in such proceedings gives the prevailing parent the benefit of previous findings, narrows the area of litigation, and imposes upon the petitioner a burden of proving a change in circumstances sufficient to overturn the prior adjudication.

CONCLUSION

The Uniform Child Custody Jurisdiction Act has endeavored to develop workable rules for the allocation of child custody jurisdiction. The Supreme Court should now articulate the values to be implemented consistent with such Act. The values, principles, and rules formulated by the Supreme Court in defining state judicial authority and the extraterritorial effect of judgments must be consistent with Constitutional Requirements, and we ask that this Court assert such clarification.

Meaning can only attach to the phrases "due process of law" and "full faith and credit" by identifying the values this Court considers implicit in the language of the Uniform Child Custody Jurisdiction Act. The broad policies of fundamental fairness, national unity and cooperation emphasized by the provisions of the Uniform Act, can then become functional guides for the allocation of jurisdiction. When it is

translated in terms of the welfare of the children affected by the litigation, the convenience of venue, the accessibility of evidence, the consequences of repeated litigation, the reasonable expectation of the litigants, and the importance of interstate cooperation and respect, the results are significant. Only in this manner will the foresight and emphasis of former Justice Rutledge of this Court, as set forth in his concurring Opinion in Halvey, supra, be given meaning:

> ". . . the controlling consideration should be the best interests of the child, not only for disposing of such cases as a matter of local policy . . . but also for formulating federal policies of full faith and credit as well as jurisdiction and due process in relation to such dispositions . . ."

Respectfully submitted,

AMERICAN SOCIETY
OF MATRIMONIAL
LAWYERS

By: HARRY M. FAIN

Attorney for
Amicus Curiae

No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

v.

JAMES THOMAS WEBB,

Respondent.

WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF NATIONAL CENTER ON WOMEN AND FAMILY LAW, INC., COMMUNITY ACTION FOR LEGAL SERVICES, INC., LEGAL AID SOCIETY OF ALAMEDA COUNTY, INC.

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TABLE OF CONTENTS

Page

Table of Authorities iii

Motion for Leave to File Brief Amici Curiae in Support of Petitioner vii

Brief of Amici Curiae 1

Interest of Amici 1

Statement of the Case 1

Summary of Argument 2

Argument

I. THE UCCJA HAS BEEN PASSED BY 45 STATES TO PREVENT CHILD-SNATCHING AND FORUM-SHOPPING AND TO PROTECT POOR PARENTS 4

A. The States Have Found That Child-Snatching and Repeated Litigation Harm Children and Their Parents 5

B. The UCCJA Protects Poor Parents from the High Costs of Litigation in a Foreign Forum 13

II. THE FULL FAITH AND CREDIT CLAUSE OF THE U.S. CONSTITUTION APPLIES TO A VALID CHILD CUSOTDY ORDER 21

A. The Availability of Modification Does Not Deprive

Page

a Custody Decree of Full Faith and Credit, But Rather Determines the Manner in Which Full Faith and Credit Applies in Custody Cases 22

B. Particularized Jurisdictional Statutes Which Provide That the State With the Closest Nexus to the Child has Subject Matter Jurisdiction and Stringest Notice Requirements Meet Constitutional Due Process Standards and Fall Within the "Status" Exception of Shaffer v. Heitner 31

C. The Florida Decree Is a Valid Decree Entitled to Full Faith and Credit by the Georgia Court Because the Florida Court had Subject Matter Jurisdiction Regarding the Matter of Custody Under the UCCJA and Because the Method for Service Provided in the Statute and Effectuated Upon the Non-Resident Father Met the Constitutional Requirements of Notice and an Opportunity to Be Heard 36

III. THE UCCJA'S POLICY AS ADOPTED BY 45 STATES COMPORTS WITH THE AIMS OF THE FULL FAITH AND CREDIT CLAUSE 39

Conclusion 46

TABLE OF AUTHORITIES

Cases:	Page
Ford v. Ford, 371 U.S. 187, 9 L.Ed.2d 240, 83 S.Ct. 273 (1962)	22, 23, 25
Halvey v. Halvey, 330 U.S. 610 (1946)	22, 23, 24, 25, 29, 30
International Shoe Co. v. Washington, 326 U.S. 301 (1945)	31, 32
Johnson v. Muelberger, 340 U.S. 581, 71 S.Ct. 474, 92 L.Ed. 552 (1951)	40
Kovacs V. Brewer, 356 U.S. 604, 2 L.Ed.2d 1008, 78 S.Ct. 963 (1958)	22, 23, 24, 25 26, 35
May v. Anderson, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221 (1952)	12, 21, 32, 34 35, 36
Matter of Potter, 10 Ohio Ops. 214, 56 Ohio Misc. 17, 377 N.E.2d 536 (1978)	21
Shaffer v. Heitner, 433 U.S. 186 (1971)	31, 33, 35

Page

Webb v. Webb, 266 S.E.2d 463 (1980) 44

Word v. Word, 236 Ga. 100, 222 S.E.2d 382 (1976) 38

U.S. Constitution

United States Constitution, Article IV, §1 ..... passim

Statutes:

Federal Statutes

28 U.S.C. §§ 1738, 1739 23

State Statutes

Florida Stat. § 61.1304 28

Florida Stat. §§ 61.1302 to 61.1348 ..... 36, 37, 38

Georgia Stat. § 30.127(b) 38

Uniform Child Custody Jurisdiction Act, 9 Uniform Laws Annot. 111 (1968) ..... passim

Other Authorities:

Bodenheimer and Neeley-

Page

Kvarme, Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko, 12 U.C. Davis L. Rev. 229 (1979) 33, 34

Child-Snatching, a "Tragedy from Start to Finish," 66 ABA Journal 1059 (1980) 11, 12, 13

May v. Anderson: Preamble to Family Law Chaos, 45 Va. L. Rev. 379 (1959) 36

Noelker, The Uniform Child Custody Jurisdiction Act: The Difficulties It Presents for Poor People, 11 Clearinghouse Review 222 (1977) 11

Restatement (Second) of Conflict of Laws 32, 33, 35

Sanders, Prevention of Child Stealing: The Need for a National Policy, 11 Loyola of Los Angeles L. Rev. 829 (1978) 12

U.S. Department of Commerce, Bureau of the Census, Characteristics of Population Below the

Page

Poverty Level: 1978, Current Population Reports, Series P-60, No. 124 16

U.S. Department of Commerce, Bureau of the Census, A Statistical Portrait of Women in the United States: 1978, Current Population Reports, Special Series P-23, No. 100 ..... 15, 16

Wallop, Pawns in the Child-Snatching Game, 15 Trial 34 (1979) 6

Weitzman and Dixon, Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce, 12 U.C. Davis L. Rev. 473 (1979) 14

IN THE

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MOTION FOR LEAVE TO FILE BRIEF
AMICI CURIAE IN SUPPORT OF
PETITIONER

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The National Center on Women and Family Law, Inc., Community Action for Legal Services, Inc., and the Legal Aid Society of Alameda County respectfully move, pursuant to Rule 42 of this Court's Rules, for permission to file the Brief Amici Curiae in Webb v. Webb, by reason of the Amici's substantial interest in the outcome of this case and their considerable experience in litigation concerning the issues presented herein.

The National Center on Women and Family Law, Inc. is a private not-for-profit organization incorporated under the laws of the State of New York for the purpose of providing legal assistance on behalf of poor women. The Center is funded by the Legal Services Corporation, as successor to the United States Office

of Economic Opportunity (OEO), to litigate on behalf of poor women in the areas of family law and to provide technical assistance on women's issues and issues in family law to Legal Services attorneys in every state.

The Legal Aid Society of Alameda County (hereinafter, LASAC) is a private non-profit organization incorporated under the laws of the State of California for the purpose of rendering legal representation and assistance without cost to persons in Alameda County, California, who are without adequate means to employ counsel. LASAC is funded by the Legal Services Corporation. The Family Law Unit is a specialized office within LASAC which handles family law matters.

Community Action for Legal Services, Inc. is the largest civil Legal Services

program in the nation. Funded by the National Legal Services Corporation as successor to the United States Office of Economic Opportunity (OEO) legal services program, CALS provides a full range of civil legal services to indigent New York City residents who cannot afford to pay a private attorney. CALS has a full time staff of over 121 attorneys, based in 21 neighborhood offices, who provide legal assistance to more than 40,000 persons a year. CALS attorneys provide representation in all the trial courts in New York City, in the State and Federal Appellate Courts and in this Court. Approximately 20% of the cases handled by CALS neighborhood legal services offices are in the area of family law. These cases include child custody cases.

The constitutional question raised by the instant appeal, namely, whether or not the full faith and credit clause applies to child custody orders, is a question of far-reaching and fundamental importance to large numbers of indigent parents whom it is movants purpose to serve.

The Amici's lawyers have considerable experience with the constitutional issues which are presented here. The National Center on Women and Family Law lawyers have substantial knowledge and experience in the representation of poor women in interstate enforcement of child custody decrees. The Legal Aid Society of Alameda County and Community Action for Legal Services lawyers have substantial knowledge and experience in

the representation of indigents in interstate enforcement of child custody decrees. All three movants have substantial knowledge and experience in the social, emotional and economic consequences for the child and the parents as a result of the Child-Snatching relitigation caused by the failure to accord custody decrees full faith and credit.

Counsel for the Petitioner Leah Lynn Parrish Webb, consents to the filing of this Brief Amici Curiae. Counsel for the Respondent, James Thomas Webb has made a motion to withdraw as counsel and accordingly had to withdraw his consent because he is no longer in a position to consent on behalf of the Respondent.

WHEREFORE, movants pray that the attached Brief Amici Curiae be

permitted to be filed with the Court.

Dated: New York, New York
November 20, 1980

RESPECTFULLY SUBMITTED,

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BRIEF AMICI CURIAE OF NATIONAL CENTER ON WOMEN AND FAMILY LAW, INC., LEGAL AID SOCIETY OF ALAMEDA COUNTY, COMMUNITY ACTION FOR LEGAL SERVICES, INC.

INTEREST OF AMICI

The interest of Amici appears from the foregoing motion.

STATEMENT OF THE CASE

Amici rely on Petitioner's Statement of the Case.

SUMMARY OF ARGUMENT

The Uniform Child Custody Jurisdiction Act has been adopted by forty-five states to extend recognition to custody orders of sister states and thus to prevent child-snatching, limit relitigation of child custody decrees, and restrict forum-shopping. The Act protects the poorer parent from the economic burdens of custody litigation caused by child-snatching or distant forums; it is especially important for women, who usually have custody and are often poverty-stricken heads of household.

The UCCJA comports with the policies underlying the full faith and credit clause. The Act's provisions meet due process requirements; therefore custody decrees are entitled to full faith and credit. The pre-UCCJA modifiability of custody decrees has been limited by the

Act, and is not a bar to full faith and credit recognition for custody decrees.

ARGUMENT

I. THE UCCJA HAS BEEN PASSED BY 45 STATES TO PREVENT CHILD-SNATCHING AND FORUM-SHOPPING AND TO PROTECT POOR PARENTS.

This case comes before this Court because two parents and the courts of two states have contrary views regarding the appropriate custody arrangements for a seven-year-old child. That issue has been litigated three times in two states in less than two years, with differing results. The issue of whether it is better for the child to be with the mother or with the father is not before the Court. Rather, the issue that this case presents is whether Article IV, §1 of the United States Constitution mandates sister-state recognition of custody decrees. If this Court finds that custody orders are entitled to full faith and credit, other children and their parents

will not be subjected to the nightmare of multi-state custody litigation, with its frequent side-effect of child-snatching.

A. The States Have Found That Child-Snatching and Repeated Litigation Harm Children and Their Parents.

The Uniform Child Custody Jurisdiction Act (hereinafter, "UCCJA"), 9 Uniform Laws Annot. 111 (1968), which was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1968, has been adopted by 45 state legislatures. While the UCCJA is a jurisdictional statute, its primary goal is to protect children by discouraging and deterring child-snatching. Section 1(a) of the UCCJA states that one of the purposes of the Act is to:

> (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

9 Uniform Laws Annot. 111, 117 (emph. added).

Child-snatching is neither a rare nor a harmless event. It has been estimated that between 25,000 to 100,000 snatchings occur annually.[1] As divorce rates continue at a high level, it is almost certain that the number of snatchings will increase. That so many states have adopted the UCCJA evidences a wide-spread recognition that child-snatching has become a national crisis. As the Commissioners' Prefatory Note states:

> There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts

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1. Wallop, "Pawns in the Child-snatching Game," 15 Trial 34, 35 fn. 2, 3 (1979).

of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find--and often do find--a more sympathetic ear for their plea for custody.

9 Uniform Laws Annot. 111, 112.

The UCCJA is also directed to the prevention of forum-shopping and re-litigation. Section 1 of the Act states that among its other purposes are to:

> (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;...
>
> (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;...
>
> (6) avoid re-litigation of custody decisions of other states in this state insofar as feasible.

9 Uniform Laws Annot. 111, 117.

In their Prefatory Note, the Commissioners state that prior to the adoption of the UCCJA, custody claimants were permitted to sue in the courts of almost any state:

> [P]hysical presence of the child opens the doors of many courts to the petitions [of the person who has possession of the child] and often assures him of a decision in his favor.... [Thus,] a custody decree made in one state in one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues.

9 Uniform Laws Annot. 111, 113. Such repeated litigation makes the child and the parent insecure and fearful that they will be separated from each other.

The UCCJA prevents forum-shopping by strictly defining in §3 which state has jurisdiction. Jurisdiction is based on the "home state" concept, defined in §2(5) as the state where the child has most recently resided for sis months. In addition, if there is a question about which state has jurisdiction, the courts that have been invited to take

jurisdiction are required by §6 to consult with each other to determine which state is the most appropriate to exercise jurisdiction. §6 also requires that if an action is already pending elsewhere, the court not exercise jurisdiction.

Child-snatching and unrestricted relitigation are especially harmful to children's psychological health. As the Commissioners recognized:

> The harm done to children by these experiences can hardly be over-estimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

9 Uniform Laws Annot. 111, 112. In extreme cases, the child's physical safety and even life may be endangered in the abduction, as well.[2] The abducting parent can go to extreme measures to hide the child; he or she may establish a new identity; forge records when the child enters into school; tell the child that the other parent does not love the child; or even that the other has died.[3] Some authorities believe that many abducting parents are willing to go to such lengths and to ignore the child's need for a secure life because they are motivated by hostility toward the other

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2. Noelker, "The Uniform Child Custody Jurisdiction Act: The Difficulties it presents for Poor People," 11 Clearinghouse Review 222 (1977).

3. "Child-snatching, a 'Tragedy from Start to Finish,'" 66 ABA Journal 1059 (1980).

parent who has legal custody, and not by concern or love for the child.[4] In less extreme cases, the abducting parent transports the child out of the child's home state but does not hide the child.

The parent whose child has been taken suffers very great harm. As this Court has said, a parent's right to the "care, custody, management and companionship of her minor children" are "far more precious...than property rights," May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 97 L.Ed. 1221, 1226 (1952). A parent whose child is gone is psychologically very hurt. Amici have found that our poor clients -- most of them

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4. Sanders, "Prevention of Child Stealing: The Need for a National Policy," 11 Loyola of Los Angeles L. Rev. 829, 831 (1978), 66 ABA Journal, supra.

mothers--are broken-hearted to lose a child; it is almost as if the child had died. For such poor women it is especially frustrating to find that their very poverty prevents them from being able to take effective action to regain the child.

B. The UCCJA Protects Poor Parents From the High Costs of Litigation in a Foreign Forum.

The parent of a snatched child needs economic means to fight the snatching. To find a child who is hidden may require the costly services of a private investigator;[5] to litigate the custody issue in a distant forum requires travel monies for the parent and for witnesses, as well as the funds to hire a new attorney.

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5. 66 ABA Journal, supra.

All parents need to be protected from child-snatching and repeated litigation in distant forums, but mothers especially need the protection which the UCCJA affords to a legal custodian. Because in more than 90 percent of divorces custody of the children goes to the mother,[6] it is likely that fathers are a majority of child snatchers.

Mothers as a group are economically much weaker than fathers. Not all mothers work outside the home. However, women who are employed have earnings that are much smaller than those of men. In 1977, the median income of civilian women who worked full-time year-round was $8,814; the median income

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6. Weitzman and Dixon, Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce, 12 U.C. Davis

of comparable men was $15,070.[7] Thus, women's median income was only 58 percent of that of men, a ratio that has been stable for many years, id. Not only is there a great disparity between the wages of women and men, but the income of families with children which are headed by women is shockingly smaller than that of families consisting of couples with children or men with children. In 1977, 41.8 percent of all families with children which were headed by a woman had

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Footnote 6 continued.

L.Rev. 473, 484 (1979).

7. U.S. Department of Commerce, Bureau of the Census, A Statistical Portrait of Women in the United States: 1978, Current Population Reports, Special Studies Series P-23, No. 100 (hereinafter "Women"), at 74.

incomes below the poverty level;[8] in contrast, only 6.2 percent of families with children which had a male householder were below the poverty level.[9] Of Black families with children headed by women, 58.8 percent have incomes below the poverty level.[10] Not only are families consisting of mothers and children disproportionately poor, their numbers have been increasing rapidly. In the period 1970 to 1977, there was a 35 percent increase in such poor families.[11] By 1977,

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8. In 1977, the poverty threshold was $6,191 for a nonfarm family of four, U.S. Department of Commerce, Bureau of the Census, Characteristics of Population Below the Poverty Level: 1978, Current Population Reports, Series P-60, No. 124, issued July 1980, (hereinafter, Poverty"), at 1.

9. Poverty, at 82.

10. Id.

11. Women, supra, at 71.

the majority of children in families below the poverty level were in female-headed families.[12]

The parties in this case fit this pattern. James Webb's after-taxes pay was about $135 per week (Tr. 35), while Leah Webb earned a gross salary of only $87 per week (Tr. 76). Leah Webb is hard put to meet the economic burden of the snatching of her son by her ex-husband. She testified that the cost to her of appearing in court in Georgia was $142 (Tr. 98-100). In addition, she missed three days of work, for which she was not paid (Tr. 100). This brought her losses for only one day of actual hearings to $196, which amounts to half a month's pay for her. This figure did not include attorneys' fees, as she was

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12. Id.

represented by a legal services attorney without any cost to her.

The UCCJA recognizes that child-snatching and relitigation of custody awards may weigh unequally on the parties and provides in Section 11(c) that the court may order one party to pay the other's travel expenses if this would be fair. In addition, Sections 8(c) and 15(b) provide that a child-snatcher may be required to pay all the other party's expenses, including attorneys' fees. These two sections add a financial deterrent to child-snatching, and also protect the economically weaker parent from the overbearing of the economically stronger party.

More important even than the UCCJA's redistribution of the financial costs of litigation, is the fact that strict

enforcement of the UCCJA by the states has removed a prime incentive of child-snatching, that is, the ability of the snatching parent to confer jurisdiction on the courts of his own state by bringing or keeping the child there. Under the UCCJA, a court in a state where the child is in violation of a custody order (§8(b)) or of long-standing practice between the parties (§8(a)) does not have jurisdiction to hear a custody dispute; rather, the courts of the home state of the child (where child has lived for at least half a year) or which had been the home state of the child less than six months before the action was begun have jurisdiction (§3(a)(1)). These UCCJA provisions protect an economically weaker legal custodian from being required to

litigate the custody issue in the other parent's home state. In addition, they reduce the likelihood of re-litigation of custody decrees since the noncustodial parent is less likely to initiate litigation before a forum where he may have lost on the issue in the past.

II. THE FULL FAITH AND CREDIT CLAUSE OF THE U. S. CONSTITUTION APPLIES TO A VALID CHILD CUSTODY ORDER.

While lower courts have construed the language of Article IV, § 1 of the U. S. Constitution as requiring states to give recognition to child custody decrees of sister states, see, e.g., Matter of Potter, 10 Ohio Ops. 3d 214, 56 Ohio Misc. 17, 377 N.E. 2d 536 (1978), this Court has never squarely decided that question. The four cases which have reached this Court have been decided on other grounds. In those cases, the Court failed to reach the full faith and credit question either because the original order was jurisdictionally suspect, May v. Anderson, 345 U.S. 528, 97 L.Ed. 1221, 73 S. Ct. 840 (1952), or because the Court found that the initial decrees

were modifiable in the states rendering them and therefore did not need to be followed, Ford v. Ford, 371 U.S. 187, 9 L.Ed.2d. 240, 83 S.Ct. 273 (1962); Kovacs v. Brewer, 356 U.S. 604, 2 L. Ed. 2d 1008, 78 S.Ct. 963 (1958); Halvey v. Halvey, 330 U.S. 610 (1946). Developments in both statutory and case law in the last twenty years address both the due process and modifiability concerns of the Court and permit the Court to meet the full faith and credit issue squarely in this case and to hold that Article IV, § 1 now applies to custody proceedings.

A. The Availability Of Modification Does Not Deprive a Custody Decree of Full Faith and Credit, But Rather Determines the Manner in Which Full Faith and Credit Applies in Custody Cases.

At least three of the four custody cases involving the full faith and credit

issue have implied in their holdings that the full faith and credit clause applies, but that the reviewing state need only give the decree the same consideration it would have been accorded in the rendering state. "[W]hat Florida could do in modifying the decree, New York may do." Halvey v. Halvey, 330 U.S. 610, 614 (1946); accord, Kovacs v. Brewer, 366 U.S. 604, 612, 2 L.Ed.2d 1008, S.Ct. 963 (1958); Ford v. Ford, 371 U.S. 187, 9 L. Ed. 2d 240, 83 S.Ct. 273 (1962). This comports with congressional legislation under the full faith and credit clause embraced in sections 1738 and 1739 of the Judicial Code, 28 U.S.C. §§1738, 1739. Section 1738 reads in pertinent part: "Such records...so authenticated...shall have the same full faith and credit in every court and

office within the United States...as they have by law or usage in the courts ... of the State ... from which they are taken." Since the decrees at issue were modifiable in the first state, at least on a showing of a change in the circumstances of the child or the custodian, they were held to be modifiable in other states on a similar showing. This reasoning requires that now that forty-five states have adopted the UCCJA and have thereby statutorily limited their jurisdiction to modify their own custody decrees, this limitation must be respected by a corresponding limitation on the jurisdiction of another forum state. This Court should hold that the full faith and credit clause commands such a limitation.

Halvey, supra, Kovacs, supra, and

Ford, supra, were not decided simply on the basis of a jurisprudential concern with technical finality. See, e.g., Halvey, supra, 330 U.S. at 616 (Frankfurter, J., concurring). They were grounded on a much more direct concern for the welfare of the children whose custody was being decided. Underlying the Court's reasoning in these custody cases there appears to be the assumption that in order to protect children, lower courts must be free to change custody decrees when changes in the child's life require it. "A court that is called upon to determine to whom and under what circumstances custody of an infant will be granted cannot, if it is to perform its function responsibly, be bound by a decree of another court ..." (Kovacs v. Brewer, 356 U.S. 604, 612, 2 L.Ed.2d.

1008, 78 S.Ct. 963 (1958) (Frankfurter, J., dissenting) (Justice Frankfurter dissented because he believed that the forum court should be free to modify a custody order "irrespective of whether changes in circumstances are objectively provable." Id.). This view, of course, was consonant with the states' own view that custody orders had to be sufficiently fluid to respond to changes in the child's life. In a society in which divorce is almost a norm and personal mobility is widespread, the result under this state of the law has been that state courts have acted in isolation and in competition with one another, Commissioner's Prefatory Note to the UCCJA, 9 Uniform Laws Annot. 99, 113 (West 1973), and consequently, "thousands of children [have been] shifted from state to state

and from one family member to another every year while their parents or other persons battle[d] over their custody in the courts of several states."

UCCJA, supra at 111.

Application of the full faith and credit clause to custody decrees will not prevent modification of custody orders as "changed circumstances" may require. Any party with an interest in the matter can institute legal action for modification in any state where sufficient jurisdictional requisites obtain. Under Section 14 of the UCCJA, that forum, even if it is not the forum which issued the original order, may decide the action if the original forum is no longer appropriate or if it declines to exercise jurisdiction. To the extent, however, that the

original forum retains a sufficient jurisdictional connection to the parties and the child, the second forum must defer, at least in the first instance, to the original court's resolution of the "changed circumstances" issue. To require the noncustodial parent in most circumstances to institute legal action in the original forum does not make modification of previous orders impossible or unduly burdensome. An alternative rule would unfairly impose a corresponding burden on the custodial parent to defend the action.

In the present case, the most appropriate forum at the time these actions were instituted was Florida, under the UCCJA §3(a)(1)(i. , Florida Statutes §§ 61.1304, and the father had full and fair opportunity to

present evidence bearing on any "changed circumstances" in Florida. The UCCJA does not impinge on a parent's ability to seek, or on a court's ability to effect, a change in custody when such change is needed. It does, however, regulate relitigation of custody matters so as to deter child snatching and forum shopping and to prevent inconsistent court judgments. These purposes implicate important federal concerns, as well. Child kidnapping and forum shopping not only hurt the child but make a mockery of federal policies of uniformity and finality of law.

Foreseeing that the Court's decision in Halvey, supra, might lead to "an unseemly litigious competition between the states and their respective courts as well as between parents," 330 U.S.

at 620 (Rutledge, J., concurring), Justice Rutledge urged that the welfare of children should be the "controlling consideration [...] not only for disposing of [custody] cases as a matter of local policy [...] but also for formulating federal policies of full faith and credit as well as of jurisdiction and due process in relation to such dispositions." Id.

The UCCJA was developed in great part because of the failure of this Court to settle the question of whether the full faith and credit clause applies to custody decrees. The Court's reluctance to apply full faith and credit was based in part on its respect for the states' desire to protect children by ensuring that custody decrees could be modified easily when the child's cir-

cumstances changed; the Court should now take under consideration the states' concern to regulate custody relitigation for the benefit of children. The federal interest in avoiding inconsistent judgments and forum shopping will also be furthered by a holding that the full faith and credit clause applies to custody orders.

B. Particularized Jurisdictional Statutes, Which Provide That the State With the Closest Nexus to the Child Has Subject Matter Jurisdiction and Contain Stringent Notice Requirements, Meet Constitutional Due Process Standards and Fall Within The "Status" Exception of Shaffer v. Heitner.

In Shaffer v. Heitner, 433 U.S. 186 (1977), this Court exempted "particularized rules governing adjudication of status" from its holding that due process requires that personal jurisdiction be based on the "minimum contacts" rule of International Shoe

Co. v. Washington, 326 U.S. 301 (1945). 433 U.S. at n. 30.[13] The Uniform Child Custody Jurisdiction Act and the Restatement (Second) of Conflict of Laws both put forth jurisdictional rules in which the child's domicile or residence

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13. In the instant case, personal jurisdiction is not as thorny a problem as in others, even under a traditional due process analysis. Unlike the mother in May v. Anderson, supra, for example, the father here had more than enough contacts with Florida to be "sufficient" under the test of International Shoe, supra. He came to Florida for the express purpose of taking the child out of the state. Previously, he had visited the child in Florida. Mother and child had moved to Florida because both her lawyer and Mr. Webb's had advised her to put 200 miles between them so that she could avoid his harassment (Tr. 84). In addition, whereas in May extra-territorial service was not provided for in custody actions (and was at the time an unusual form of notice), in this case there is a clear statutory provision for personal extraterritorial service, and such service is common.

in the state, coupled with stringent notice requirements, are the major jurisdictional criteria. Restatement, supra §§69, 79; 9 Uniform Laws Annot. 111, 122, 131. By enacting the UCCJA, forty-five states have adopted the view that custody proceedings are child-centered rather than defendant-centered, and that they are "status proceedings" within the meaning of Shaffer v. Heitner, supra.[14] Bodenheimer and Neely-Kvarme point out that the Restatement (Second) of Conflict of Laws classifies child custody proceedings as status proceedings[15] and argue that im-

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14. See, generally, Bodenheimer and Neeley-Kvarme, Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko, 12 U.C. Davis L.Rev. 229 (1979) in which the authors argue persuasively for the constitutional sufficiency of the specialized jurisdictional provisions of the Second Restatement and the UCCJA.

15. 12 U.C. Davis L.Rev. at 2401.

posing the minimum contacts rule in child custody cases would be to demand the impossible because "attempts to find a sufficient nexus between absent married or unmarried parents and a forum that is appropriate in the interest of the child would fail in many instances... As a result,...[c]ountless child disputes would remain unresolved."[16] See May v. Anderson, 345 U.S. 528, 539, 97 L.Ed. 1221, 73 S.Ct. 840 (1952) (Jackson, J., dissenting).[17] The status exception

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16. 12 U.C. Davis Law Rev. at 252.

17. In May, the Court ruled that a custody disposition rendered where one parent was neither present in, nor a domiciliary or a citizen of the rendering State, had been personally served outside the State, and had not appeared, was not entitled to full faith and credit. Of the eight Justices who participated in the case, three dissented and would have affirmed the lower court's holding that the earlier disposition commanded full faith and credit. A fourth, Justice Frankfurter, concurred

created in Shaffer has prepared the way for the Court in the case now before it to hold that jurisdictional rules embodied in the UCCJA and the Second Restatement of Conflicts and followed in this case establish a valid decree for purposes of interstate recognition and enforcement.

Footnote 17 continued

with the plurality only because in his view a custody order was never entitled to full faith and credit. 345 U.S. at 536. See Kovacs v. Brewer, 356 U.S. 604, 612, 2 L.Ed.2d 1008, 78 S.Ct. 963 (1958), (Frankfurter, J., dissenting). Justice Frankfurter made it clear, however, that the due process clause would not be offended if Ohio chose to recognize the earlier Wisconsisn decree. 345 U.S. at 535-6. Thus, of the eight Justices who participated only four opined that full faith and credit was not due because of the jurisdictional facts of the case. For a criticism of May, see May v. Anderson: Preamble to Family Law Chaos, 45 Va. L.Rev. 379 (1959).

C. The Florida Decree Is a Valid Decree Entitled to Full Faith and Credit By the Georgia Court Because the Florida Court Had Subject Matter Jurisdiction Regarding the Matter of Custody under the UCCJA and Because the Method for Service Provided in the Statute and Effectuated Upon the Non-resident Father Met the Constitutional Requirements of Notice and an Opportunity To Be Heard.

Florida, like Georgia, is a signatory of the UCCJA, which provides the bases for subject matter and personal jurisdiction in child custody cases; it is contained in Florida Statutes §§61.1302 to 61.1348. In the Florida order, which is the subject of this action, the Court found inter alia that it had jurisdiction of the parties and subject matter, and that mother and child were residents of Florida, not-withstanding the child's physical presence in Georgia. These findings and orders satisfied the requirements of the Florida Statutes and there-

fore the Florida decree was entitled to full faith and credit in Georgia.

Specifically, Florida had subject matter jurisdiction pursuant to Florida Statute §61.1304 because Florida is the "home state" of the subject child. Jurisdiction was obtained over the responding party pursuant to §61.1306, by personal delivery of the papers pursuant to §61.1314. Florida recognized the initial custody and visitation decree, and registered it as a Florida judgment. The court then implicitly reaffirmed the original custody decree, with full knowledge of the child's temporary residence in Georgia due to the father's taking and retaining the child, and, finding it to be in the child's best interests, modified the original visitation decree.[18]

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18. Note that the modification gave the

This modification was permissible under the Florida statute (§61.13), since Georgia no longer had continuing jurisdiction and Florida was now the home state of the child.[19]

Footnote 18 continued.

father more contact with the child than he had been exercising theretofore.

19. It should be noted that, unlike most states, Georgia law does not provide for continued jurisdiction in custody matters after the final decree, but requires the filing of a new proceeding. Ga. Stat. §30.127(b). See Word v. Word, 236 Ga. 100, 222 S.E.2d 382 (1976).

III. THE UCCJA'S POLICY AS ADOPTED BY 45 STATES, COMPORTS WITH THE AIMS OF THE FULL FAITH AND CREDIT CLAUSE.

The full faith and credit clause was intended to unify the separate states into one nation and to make judgments rendered in one state res judicata in sister-states:

> [T]he Framers intended it to help weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state of the original forum. The faith and credit given is not to be niggardly but generous, full. "[L]ocal policy must at times be required to give way, such 'is part of the price of our federal system.'"
>
> This constitutional purpose promotes unification, not centralization. It leaves each state with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with jurisdiction. "One trial of an issue is enough. 'The

> principles of res judicata apply to questions of jurisdiction as well as to other issues' as well to jurisdiction of the subject matter as of the parties."

Johnson v. Muelberger, 340 U.S. 581, 584-85, 71 S. Ct. 474, 92 L.Ed. 552 (1951), citations omitted. That the UCCJA is intended to serve these same policies with regard to child custody orders is clearly set out in §1 of the Act.

§1(a)(1) and (8) of the Act expressly seek to provide for national unity: "(1) avoid jurisdictional competition and conflict between the states" and "(8) promote and expand the exchange of information..." between the various state courts. §1(a)(2) and (7) of the Act expressly seek interstate comity: "(2) promote cooperation with the courts of other states..." and "(7) facilitate the enforcement of custody decrees of other states." Finally, a

major purpose of the UCCJA is to provide for finality of litigation: "(4) discourage continuing controversies over child custody..." and "(6) avoid relitigation of custody decisions...."

The Commissioners' Prefatory Note further emphasizes the connection between policies underlying the full faith and credit clause and the UCCJA:

> The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules.... Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences.... The Act is designed to bring some semblance of order into the existing chaos....
>
> Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and

> confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and non-residents, on an equal basis and from the standpoint of the welfare of the child.

9 Uniform Laws Annot. 111, 112-114.

Section 13 of the UCCJA itself (Ga. Stat. §74-514) requires that custody decrees issued pursuant to valid jurisdictional bases by courts in sister states be recognized:

> The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act....

As stated in the Commissioners' Note following §13 of the UCCJA, 9 Uniform Laws Ann. 111, 151 (1968), "This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced." Thus, requiring the states to grant full faith and credit to the custody orders of sister states would not impose any additional burden on the forty-five states that have adopted the UCCJA.

Amici have found that the operation of the UCCJA has improved enormously the situation of poor mothers and fathers who are legal custodians of their children when those children are taken away wrongfully to another state. If this Court holds that the Florida decree obtained by Leah Webb is not entitled to full faith and credit in Georgia, a shadow will be cast on the UCCJA and some,

if not all, of its effectiveness will be lost.[20] Thus, many years' work of the Commissioners on Uniform Laws and of some 45 state legislatures will be undermined.

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20. The Georgia court violated the following sections of the UCCJA: §3(a)(1), as Georgia was not the home state of the child and Florida had been within six months prior to the commencement of the action; §3(a)(2), because this cannot be used as a basis if jurisdiction under 3(a)(1) is available, as it was in this case; §3(a)(3), because the child had not been abandoned; §3(a)(4), because Florida did have jurisdiction and was willing to assume it; §6, because an action was pending in Florida when the Georgia action was begun and the Georgia Court was so informed; §8(b), because the child was wrongfully removed from Florida; and §13, because it failed to recognize the Florida order, which had been entered prior to the entry of the Georgia court's order. Although the Supreme Court of Georgia says in its decision that had the lower Georgia court dismissed the proceeding, "there could have been no resolution of the custody dispute by any Court unless a new lawsuit were brought," Webb v. Webb, 266 S.E.2d 463, 465, the Georgia Supreme Court ignored the fact that the Florida decree had resolved the custody issue and was res judicata.

And, the old state of chaos, including child-snatching and repeated re-litigation of custody, may return.

CONCLUSION

WHEREFORE, Amici request that this Court find that the Florida custody decree obtained by Leah Webb pursuant to the Uniform Child Custody Jurisdiction Act was entitled to full faith and credit in the courts of Georgia.

Dated: New York, New York
November 20, 1980

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No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

vs.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF AMICI CURIAE FOR THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS ON BEHALF OF THE RESPONDENT

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QUESTIONS PRESENTED.

I. Does Article IV, Section 1 of the United States Constitution require that full faith and credit be given to a Florida judgment, purporting to enforce, in part, and modify, in part, a Georgia child custody decree, when:

(1) to do so would conflict with the provisions of the Uniform Child Custody Jurisdiction Act, the controlling law in both Florida and Georgia;

(2) the Florida court acted without subject matter jurisdiction;

(3) the Florida judgment violated the policies and statutes of the State of Georgia; and

(4) the question of changed circumstances in the condition of the parties was not res judicata in Florida?

II. Does Florida jurisdiction over the Respondent, who is not a resident or domiciliary of Florida, who entered Florida one time to retrieve his child back to Georgia, who was served with process in Georgia, and who never appeared in the Florida litigation, depend upon Florida's capacity to take personal jurisdiction over him under *May* v. *Anderson*, 345 U.S. 529, or upon his single visit to take his child as a "minimum contact" with the forum, or upon the terms of the Uniform Child Custody Jurisdiction Act?

TABLE OF CONTENTS.

PAGE

QUESTIONS PRESENTED i
INTEREST OF THE AMICI CURIAE 1
SUMMARY OF THE ARGUMENT 2
ARGUMENT:
I. GEORGIA NEED NOT GIVE FULL FAITH AND CREDIT TO THE FINAL JUDGMENT OF THE CIRCUIT COURT OF ALACHUA COUNTY, FLORIDA, UNDER ARTICLE IV, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES AND 28 U.S.C. 1738, FOR THE FOLLOWING REASONS: 5
A. If the Final Judgment of the Circuit Court of Alachua County, Florida, receives full faith and credit, it will virtually nullify the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) which rule jurisdiction over child custody matters in both states 5
B. Florida's action to take jurisdiction under Section 15 of the UCCJA (West's F.S.A. 61.1332) fails because Section 15 only provides for enforcement of out-of-state decrees, does not confer subject matter jurisdiction upon Florida courts, and does not "domesticate" out-of-state decrees 9
C. The Circuit Court of Alachua County, Florida, did not have subject matter jurisdiction over modification of the Georgia child custody decree, under Section 14 of the UCCJA (West's F.S.A. 61.133), and its Final Judgment is not entitled to full faith and credit 12
D. The Final Judgment of the Circuit Court of Alachua County, Florida, is not entitled to full faith and credit in Georgia because strong public policy in Georgia, as expressed in its enactment of the UCCJA (Ga. Code 74-501 to 74-525), would reject the notion that Florida had jurisdiction to modify the Georgia decree... 14

PAGE

E. Even if the Final Judgment of the Circuit Court of Alachua County, Florida, was made with subject matter jurisdiction, that would not preclude Georgia from modifying the decree, since change of circumstances was not litigated in Florida and, therefore, was not res judicata, and it could be considered in Georgia under the doctrines of *Halvey* v. *Halvey,* 330 U.S. 610 (1947) 15

F. Conclusion 16

II. EVEN THOUGH THE FINAL JUDGMENT OF THE CIRCUIT COURT, ALACHUA COUNTY, FLORIDA, IS NOT ENTITLED TO FULL FAITH AND CREDIT IN GEORGIA, IT SHOULD NOT BE DENIED FULL FAITH AND CREDIT BECAUSE THE FLORIDA COURT LACKED PERSONAL JURISDICTION OVER THE RESPONDENT 18

A. Florida jurisdiction was based on Section 3 (a)(1) and (2) of the UCCJA, and meets the requisite test of "traditional notions of fair play and justice" under the 14th Amendment of the Constitution of the United States 18

B. If this Court adopts the position urged by the Petitioner—that the Respondent had sufficient "minimum contact" with the forum based on his taking of the child in Florida and transporting it into Georgia—it risks subjecting children to further forum shopping and child-snatching because of the transitory character of jurisdiction so established 25

C. Conclusion 28

TABLE OF AUTHORITIES.

Cases.

Avery v. *Avery*, Fla. App., 314 So. 2d 198 (1975) ... 16
Bank of Augusta v. *Earle*, 13 Peters. 519, 10 L. Ed. 274 (1839) ... 9
Belford v. *Belford*, Sup. Ct., Fla., Div. B, 32 So. 2d 312 (1947) ... 16
Bennett v. *Bennett*, Sup. Ct., Fla., Div. B, 73 So. 2d 274 (1954) ... 16
Durfee v. *Duke*, 375 U.S. 106; 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963) ... 13
Estin v. *Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948) ... 18
Ford v. *Ford*, 371 U.S. 187, 83 S. Ct. 273, 9 L. Ed. 2d 240 (1962) ... 6, 15
International Shoe v. *Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 45 (1945) ... 20, 26
Kovacs v. *Brewer*, 356 U.S. 604, 78 S. Ct. 963, 2 L. Ed. 2d 1008 (1958) ... 6, 15
Krieger v. *Krieger*, 334 U.S. 555, 92 L. Ed. 1572 (1948) ... 18
Kulko v. *Super. Ct.*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) ... 20, 21, 27
May v. *Anderson*, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953) ... 6, 18, 19, 22, 24, 28
Milwaukee County v. *White*, 296 U.S. 268, 56 S. Ct. 229, 80 L. Ed. 220 (1935) ... 8
Nevada v. *Hall*, 99 S. Ct. 1182 (1979) ... 8, 9, 14
New York ex rel Halvey v. *Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947) ... 1, 6, 15, 16
Pennoyer v. *Neff*, 95 U.S. 741, 24 L. Ed. 565 (1878) ... 18, 20, 24
Pinner v. *Pinner*, 234 S. E. 2d 633, 33 N. C. App. 294 (1977) ... 11
Rush v. *Savchuk*, 100 S. Ct. 571 (1980) ... 20, 21, 23, 24
Sanders v. *Sanders*, Fla. App., 376 So. 2d 880 (1979) ... 15, 16

Shaffer v. *Heitner*, 433 U.S. 186, 97 S. Ct. 2869, 53 L. Ed. 2d 683 (1977) 20, 21, 22, 24

Stanley v. *Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 551 (1972) 24

State ex rel Greebel v. *Endsley*, Ind., 379 N. E. 2d 440 (1978) 11

Stricklin v. *Stricklin*, Fla. App., 383 So. 2d 1183 (1980) 16

Worldwide Volkswagen v. *Woodson*, 100 S.Ct. 559 (1980) 20, 21, 22, 24, 25

Constitutional Provisions.

Article IV, Section 1 ..... 5, 14

Amendment IV 20, 22

Statutes.

Georgia Code 74-501 to 74-525 ..... 5, 7, 10, 14, 15, 18, 22

NCCUSL, *Uniform Child Custody Jurisdiction Act* (1968) 5-19, 21-27

NCCUSL, *Uniform Enforcement of Foreign Judgments Act* (1948), Amended 1964 11

NCCUSL, *Uniform Marriage and Divorce Act* (1971), Amended 1973 26

NCCUSL, *Uniform Reciprocal Enforcement of Support Act* (1951), Amended 1958, 1968 11

96th Cong., 2nd Sess., H.R. 8406 17

West's F.S.A. 61.1302 to 61.1348 ..... 5, 7, 10, 14, 15, 18, 22

Secondary Sources.

ALI, Restatement, Conflict of Laws I, § 451(2) 13

Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws," 22 Vanderbilt L.Rev. 1207 8

Bodenheimer and Neeley-Kvarme, "Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko," 12 U.C.D.L. Rev. 229 ..... 20, 21
Clark, *The Law of Domestic Relations* (1968) 8, 26
Ehrenzweig, "Interstate Recognition of Custody Decrees," 51 Mich. L.Rev. 345, Revised in *Selected Readings on Conflict of Laws* 822 (Culp. Ed. 1956) 8
Ehrenzweig, "The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings," 64 Mich. L.Rev. 1 8
Fain, A.B.A. Family Law Section Institute, 5 Fam. L.Rptr. 2186 (1979) 12
Hazard, "May v. Anderson, Preamble to Family Law Chaos," 45 Va. L.Rev. 379 8
Joint Hearing, Subcommittee on Criminal Justice of the Committee on the Judiciary and the Subcommittee on Child and Human Development of the Committee on Labor and Human Resources of the U.S. Senate, *Parental Kidnapping Prevention Act of 1975,* S.105, U.S. Senate, 96th Cong., (January 30, 1980) 8
Ratner, "Child Custody in the Federal System," 62 Mich. L.Rev. 795 8

Miscellaneous.

Appellant's Brief, *Webb* v. *Webb,* Sup. Ct., State of Ga., No. 35703 12
Final Judgment, *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., April 18, 1979..... 10, 16, 21
Order, *Webb* v. *Webb,* No. 79-C-43, Super. Ct., Berrien County, Ga., June 21, 1979..... 6, 12
Petition, *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., March 2, 1979..... 9, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

vs.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF AMICI CURIAE FOR THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS ON BEHALF OF THE RESPONDENT

INTEREST OF THE AMICI CURIAE

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a national organization of the legal profession and of state government, which is dedicated to the principle of uniformity in state law in those subject areas of the law for which the policy of uniformity overcomes individual state interests. As the institution of state government so designated and supported by the many states for this purpose, the NCCUSL completed the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968. The UCCJA has been adopted in 44 states, including the states in which the parties to this action reside and litigated their dispute. The UCCJA provided the statutory framework under which both the Florida and Georgia

courts acted. The NCCUSL is the only institution in the U.S. which can provide this Court with the national perspective on child custody matters and the UCCJA. In addition, any ruling by this Court will have substantial effect upon further adoptions of the UCCJA in the remainder of the states, and may influence, materially, the policies the UCCJA purports to serve. The NCCUSL, its President, and its Legal Counsel have obtained the consent of the parties to file as Amici Curiae.

SUMMARY OF THE ARGUMENT

I. If this Court grants full faith and credit to the Final Judgment of the Circuit Court of Alachua County, Florida, its decision will conflict with the Uniform Child Custody Jurisdiction Act (UCCJA), which is the controlling law in Florida, Georgia, and 42 other states. The UCCJA was promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to combat chronic problems in interstate child custody disputes, problems exacerbated by prior rulings of this Court.

However, the Florida court acted without jurisdiction over the subject matter, under Sections 14 and 15 of the UCCJA. The initial decree was a Georgia decree. Efforts by the Florida court, under Section 15, to enforce the Georgia decree could not, under the terms of the UCCJA, confer jurisdiction on the Florida court. Further, the Florida court's effort to modify the Respondent's visitation rights was attempted without jurisdiction, under Section 14 of the UCCJA. Under Section 14, if Georgia retained a basis for jurisdiction, Florida could not take jurisdiction to modify the Georgia decree. Georgia retained a basis for jurisdiction. Georgia need not give full faith and credit to any judgment made without jurisdiction over the subject matter, when jurisdiction was not "fully and fairly" litigated in the Florida court, under *Durfee* v. *Duke,* 375 U.S. 106. Therefore, the Georgia court could, and did, properly deny full faith and credit to the Florida court's Final Judgment.

Further, if the judgment of the Florida court violates the statutes and policies of Georgia, Georgia need not extend full faith and credit to it, under *Nevada* v. *Hall,* 99 S. Ct. 1182. Georgia has adopted the UCCJA and its policies. The Florida court acted in a fashion contrary to the provisions of the UCCJA. The Georgia courts could, therefore, deny full faith and credit to the Final Judgment of the Florida court.

In addition, under *New York ex rel Halvey* v. *Halvey,* 330 U.S. 610, what Florida may do with child custody matters, Georgia may do, under Article IV, Section 1 of the *U.S. Constitution* and 28 U.S.C. 1738. The substantive rule for modification of child custody decrees in Florida requires a finding of changed circumstances in the condition of the parties. The issue of changed circumstances is res judicata, in Florida, if fully and fairly litigated. But the Florida court, on the face of its Final Judgment, failed to consider changed circumstances. Therefore, the issue was not res judicata, and could be considered in Georgia. The Georgia courts found changed circumstances which called for transferring custody to the Respondent.

II. Even though the Florida court acted without subject matter jurisdiction, it should not be denied jurisdiction because the Respondent was not served in Florida and was not a resident of Florida. Further, jurisdiction over the Respondent should not be based on his one entry into the State of Florida to pick up his child. Under *May* v. *Anderson,* 345 U.S. 528, this Court denied full faith and credit to a Wisconsin child custody decree in the State of Ohio, because Wisconsin did not have personal jurisdiction over the Ohio parent. This case should now be reconsidered on the basis of *Shaffer* v. *Heitner,* 433 U.S. 186, and cases subsequent to it, which authorize jurisdiction upon factors of contact between the parties, the forum, and the litigation. The basic principle is the "traditional notions of fair play and justice" under the 14th Amendment to the *Constitution of the United States.* The UCCJA, which determined jurisdiction in Florida, provides a fair balance of these

factors, and meets the tests demanded under the 14th Amendment. Since the Florida court took jurisdiction over the person of the Respondent, under the UCCJA, jurisdiction over his person should be upheld.

Further, cases since *International Shoe* v. *Washington,* 326 U.S. 310 (1945), have encouraged more transitory bases for jurisdiction. At the same time, this Court has recognized the right of states to adjudicate matters in their courts. If this Court allows Florida's jurisdiction over the person of the Respondent to be based on his single act of taking his child from Florida to Georgia, it shall encourage actions too transitory to be in the best interests of children, and shall deprive the states of their rights to adjudicate the disputes of their citizens. The UCCJA provides a stable balance between these contending requirements, and meets the best interests of children at the same time.

This Court should allow the Georgia decision to stand, because Florida has no subject matter jurisdiction, based on its effort to enforce and to modify the Georgia decree. It should reject, as finally overruled, the case of *May* v. *Anderson.* It should, also, permit the UCCJA to be the controlling law as the best solution to the needs of litigants and the individual states.

ARGUMENT

I.

GEORGIA NEED NOT GIVE FULL FAITH AND CREDIT TO THE FINAL JUDGMENT OF THE CIRCUIT COURT OF ALACHUA COUNTY, FLORIDA, UNDER ARTICLE IV, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES AND 28 U.S.C. 1738, FOR THE FOLLOWING REASONS:

A. If the Final Judgment of the Circuit Court of Alachua County, Florida, receives full faith and credit, it will virtually nullify the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) which rule jurisdiction over child custody matters in both states.

The Amici Curiae assert that this Court should not give full faith and credit to the Final Judgment of the Circuit Court of Alachua County, Florida, as Petitioner requests. To do so will most probably bring Article IV, Section 1 of the *Constitution of the United States* into conflict with the Uniform Child Custody Jurisdiction Act (UCCJA), the controlling law in Georgia and Florida.[1] This result would be very unfortunate, since 42 other states have joined Florida and Georgia in enacting this important Uniform Act.[2] If full faith and credit cannot be reconciled with the UCCJA, an enormous effort to end the chronic chaos in interstate child custody disputes will most certainly fail. For the

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[1] National Conference of Commissioners on Uniform State Laws (NCCUSL), *Uniform Child Custody Jurisdiction Act* (1968) (See: Appendix); West's F.S.A. §§ 61.1302 to 61.1348; Ga. Code 74-501 to 74-525.

[2] These states, from the official records of the NCCUSL, are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

Court to rule, adequately, the Amici Curiae respectfully offer some background remarks.

Webb v. *Webb* does not represent a normal child-snatching situation. The facts indicate that the Respondent did not enter Florida to take his child until he was contacted by Florida authorities. There may even be some color of authority in his assumption of the child's custody. He found his child without immediate adult supervision, and the Superior Court in Berrien County, Georgia, the only court to conduct a complete proceeding in this matter, found the child abandoned, in fact.[3] That Court also found other circumstances, such as the Petitioner's transience, which bore upon its decision to give the Respondent custody. She had moved six times, for example, in a two-year period.[4]

The usual child-snatching involves a parent or person acting as parent who flees from the initial forum to a foreign forum because he or she knows that a foreign forum may be more congenial to his or her interests. The Respondent returned to the initial forum. He, then, litigated custody in that forum. His actions do not indicate anything more than a real concern for the best interests of the child, found in a disturbing situation.

It is also important to note that taking the child in no way created jurisdiction in Georgia. The old rules for taking jurisdiction on the mere presence of the child do not apply in either Georgia or Florida. The UCCJA controls, a factor not before this Court in its four prior child custody cases.[5] The

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[3] Order, *Webb* v. *Webb*, No. 79-C-43, Super. Ct., Berrien County, Ga., June 21, 1979.

[4] *Ibid.*

[5] *New York ex rel Halvey* v. *Halvey*, 330 U. S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); *May* v. *Anderson*, 345 U. S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953); *Kovacs* v. *Brewer*, 356 U. S. 604, 78 S. Ct. 963, 2 L. Ed. 2d 1008 (1958); *Ford* v. *Ford*, 371 U. S. 187, 83 S. Ct. 273, 9 L. Ed. 2d 240 (1962).

Amici Curiae assert that Georgia properly had jurisdiction over the modification of the initial decree under the strict terms of the UCCJA. Further, the UCCJA protects children from multi-state conflict if it is properly applied. This Court should be aware of its general effect on interstate child custody disputes to understand this fact.

Section 3 of the UCCJA provides four bases by which an enacting state may take jurisdiction over child custody matters.[6] Generally, initial jurisdiction may be taken when a state is the home state of the child, or a former home state with which substantial contacts remain. Once a state with UCCJA jurisdiction initiates a proceeding, Section 6 instructs sister UCCJA states to refrain from proceeding.[7] Once a decree has been entered, Section 13 provides for its enforcement in sister UCCJA states.[8] Section 14 limits modification in sister UCCJA states. Section 14 may be the most critical section in the entire Act. A state may not modify a decree of another state unless "it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify . . ."[9] The major effect of the UCCJA is simply to protect jurisdiction in the initial forum, thereby eliminating the incentive to seize and run. If the initial forum's basis for jurisdiction terminates, then only a state with appropriate jurisdiction under Section 3 may proceed to modify. These careful limitations upon modification are the basic protections for children. Coupled with the other provisions in the UCCJA for interstate cooperation between courts, they provide a complete, organic set of rules for the fair adjudication of child custody disputes.

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[6] West's F. S. A. 61.1308; Ga. Code 74-504.
[7] West's F. S. A. 61.1314; Ga. Code 74-507.
[8] West's F. S. A. 61.1328; Ga. Code 74-514.
[9] West's F.S.A. 61.1329; Ga. Code 74-515.

The UCCJA was created because full faith and credit has not been an adequate source of remedy for interstate child custody disputes. All commentators agree that the four prior cases which this Court has decided have fueled these disputes under the guise of full faith and credit.[10] The best estimates of actual child-snatching, which pre-UCCJA law literally encouraged, indicate that between 25,000 and 100,000 of these cases take place each year.[11] Desperately in need of some remedy, the states resorted to inherent powers under principles of comity to resolve their difficulties.

The genius of the federal system lies in its capacity to create a remedy at one level of government, when it cannot be obtained at another. As to comity between states, this Court said in *Milwaukee County* v. *White,* 296 U.S. 268, 272, 80 L.Ed. 220, 56 S.Ct. 229 (1935), "A state court, in conformity to state policy, may, by comity, give a remedy which full faith and credit does not compel." More recently, this Court said, in *Nevada* v. *Hall,* 99 S.Ct. 1182, 1191:

> Indeed, in view of the Tenth Amendment's reminder that powers not delegated to the Federal Government nor prohibited to the States are reserved to the people, the existence of express limitations on state sovereignty may

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[10] See: Ehrenzweig, "Interstate Recognition of Custody Decrees", 51 Mich. L.Rev. 345 (1953), revised in *Selected Readings on Conflict of Laws* 822 (Culp. Ed. 1956); Ratner, "Child Custody in the Federal System," 62 Mich. L.Rev. 795 (1964); Ehrenzweig, "The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings," 64 Mich. L.Rev. 1 (1965); Clark, *The Law of Domestic Relations* 323 to 326 (1968); Hazard, "May v. Anderson, Preamble to Family Law Chaos," 45 Va. L.Rev. 379; Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws," 22 Vanderbilt L.Rev. 1207 (1969).

[11] Joint Hearing, Subcommittee on Criminal Justice of the Committee on the Judiciary and the Subcommittee on Child and Human Development of the Committee on Labor and Human Resources of the U.S. Senate, *Parental Kidnapping Prevention Act of 1975,* S. 105, U.S. Senate, 96th Congress, at page 10 (January 30, 1980).

> equally imply that caution should be exercised before concluding that unstated limitations on state power were intended by the framers. [See, also, *Bank of Augusta* v. *Earle,* 13 Peters. 519, 590; 10 L.Ed. 274 (1839).]

It has been this Court's position, therefore, to presume comity, and the UCCJA was created in reliance upon these principles.

Given the massive state effort, through the UCCJA, to solve interstate child custody problems, it would be an ironic result for the states to find full faith and credit, once again, against them. A strict interpretation of the UCCJA would limit modification jurisdiction to Georgia. To require Georgia to give full faith and credit to Florida would defeat that limitation. Modification would once again become easier from state to state. Child custody matters would once again be in turmoil on a national scale. Therefore, the Amici Curiae most respectfully urge that full faith and credit not be given to the Final Judgment of the Circuit Court of Alachua County for the reasons which follow.

B. Florida's action to take jurisdiction under Section 15 of the UCCJA (West's F.S.A. 61.1332) fails because Section 15 only provides for enforcement of out-of-state decrees, does not confer subject matter jurisdiction upon Florida courts, and does not "domesticate" out-of-state decrees.

The Petitioner, upon the removal of the child, filed the Georgia decree with the Florida court, pursuant to Section 15 of the UCCJA.[12] She, then, petitioned the Florida court to modify the Georgia decree, which the Florida court did to the extent of particularizing the Respondent's visitation rights.[13] It is Petitioner's contention, in her Petition for Certiorari, that the order

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[12] Petition *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., March 2, 1979.

[13] *Ibid.*

of the Florida court domesticated the decree in Florida and robbed Georgia of all power to reconsider its own decision.[14]

So far as the Amici Curiae are concerned, this theory derives no substance from the statutory provisions alleged to be its basis. Petitioner can cite no case law to support this contention, and it directly contradicts the intent of the drafters of the UCCJA.

Section 15 of the UCCJA permits the filing of a "certified copy of a custody decree of another state" in the appropriate clerk of court's office.[15] The filing facilitates the enforcement requirement of Section 13 of the UCCJA. Under Section 13, "the courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction . . ."[16] The official Comment to Section 13 notes: "This section and Sections 14 and 15 are the key provisions which guarantee a measure of security and stability of environment to the 'interstate child' by discouraging relitigation in other states."[17] It is clear that these Sections are to be read together.

Section 15(a) of the UCCJA facilitates the enforcement of decrees of the courts of other states in this fashion: "A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State."[18]

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[14] Final Judgment *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., April 18, 1979. The Judgment states: "1. That certain Final Decree of Divorce entered by the Superior Court, Berrien County, Ga., Case No. 77-D-69, dated September 22, 1977, and filed with this Court, is hereby established as if it were a judgment of the Court." Petitioner's theory on domestication, as the basis for Florida jurisdiction, is stated in the Petition for Writ of Certiorari, *Webb* v. *Webb,* S. Ct. of the United States, at page 2.

[15] West's F.S.A. 61.1332; Ga. Code 74-516.

[16] West's F.S.A. and Ga. Code *supra* note 8.

[17] NCCUSL *supra* note 1, at page 20.

[18] West's F.S.A.; Ga. Code *supra* note 15.

This means that methods of enforcement available, whether that be habeas corpus, contempt powers, or the services of the local sheriff under an appropriate order, to a domestic decree are available to an out-of-state decree recognized and enforceable under Section 13. Note the Comment to Section 15: "Out-of-state custody decrees which are required to be recognized are enforced by other states. See Section 13. Subsection (a) provides a simplified and speedy method of enforcement . . . *The Authority to enforce an out-of-state decree does not include the power to modify it.*"[19]

The Petitioner's theory of domestication, as it rests on these Sections, is an odd one. The plain language of Sections 13 and 15 clearly refers to recognition and enforcement of out-of-state decrees. The language says or does nothing to convert the Georgia decree to a Florida decree. There is nothing in the official commentary to support the notion of domestication. The Georgia decree remains a Georgia decree.

Section 15 was derived from similar provisions in the Uniform Enforcement of Foreign Judgments Act and the Uniform Reciprocal Enforcement of Support Act (URESA).[20] Cases decided under these two Acts tend to regard filing as a "ministerial act," and enforcement proceedings as "proceedings supplemental" to the main proceeding.[21] It only remains to note, under the UCCJA, that enforcement requires no jurisdiction under Section 3. Section 3 applies to "initial or modification" decrees. And the principal proceeding is always a proceeding for an "initial or modification" decree in child custody cases. Nothing supports the Petitioner's contention. Filing and enforcement do not convert an initial state's decree

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[19] NCCUSL *supra* note 1, at pages 22-23.

[20] NCCUSL, *Uniform Enforcement of Foreign Judgments Act* (1948), amended 1964; NCCUSL, *Uniform Reciprocal Enforcement of Support Act* (1951), amended 1958, 1968.

[21] See: *Pinner* v. *Pinner,* 234 S.E.2d 633, 636, 33 N.C. App. 204 (1977); *State ex rel Greebel* v. *Endsley,* Ind., 379 N.E.2d 440 (1978).

into a decree of an enforcing state, and no jurisdiction over this case can possibly be derived from actions taken under Section 15.

C. The Circuit Court of Alachua County, Florida, did not have subject matter jurisdiction over modification of the Georgia child custody decree, under Section 14 of the UCCJA (West's F.S.A. 61.133), and its Final Judgment is not entitled to full faith and credit.

It remains to examine the Florida court's effort to assume jurisdiction to modify the Georgia decree. Modification of decrees of other states is permitted, if at all, under Section 14. It should be remembered that a sister state's initial decrees are to be protected in the main. If a basis for jurisdiction continues in the initiating state, Section 14 prevents modification. If a sister state's jurisdiction has terminated, a court must then find that it has jurisdiction under Section 3. "The Act does make a state a child's home state if he or she has stayed there for six months. However, that provision has to be read in conjunction with Section 14 of the Act, which does not permit modifications by another state as long as the first state's exclusive jurisdiction continues."[22]

Florida should honor Georgia's decree, and refrain from modifying it, if Georgia jurisdiction remains under the UCCJA. But the Florida court did not make any effort, even, to inquire into jurisdiction in Georgia. If it had, it probably would have concluded that Georgia retained jurisdiction, under the UCCJA. The Petitioner concedes as much in her brief before the Georgia Supreme Court.[23] The Georgia trial court was able to find jurisdiction, after considering the evidence, on several bases.[24] The rule of law is not ambiguous. As long as Georgia

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[22] Fain, A.B.A. Family Law Section Institute, 5 Fam. L. Rptr. 2186 (1979).

[23] Appellant's Brief, *Webb* v. *Webb*, Sup. Ct., State of Ga., Case No. 35703, at page 14.

[24] Order, *supra* note 3.

had jurisdiction, the Florida court violated the Florida UCCJA when it modified the Georgia decree.

It is well settled that a court of one state need not give full faith and credit to the judgment of a sister state, taken without either jurisdiction over the subject matter or the person.[25] In *Webb* v. *Webb,* Florida lacked subject matter jurisdiction over modification of the Georgia decree. However, in *Durfee,* this Court stated:

> From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

Durfee seems fully applicable to the order of the Florida court.

Clearly, on its face, the Florida order lacked subject matter jurisdiction. There is nothing on the record to indicate that the Florida court's jurisdiction "had been fully and fairly litigated by the parties and finally decided." Since no issue was made of jurisdiction in Florida, the Georgia courts could consider the validity of Florida jurisdiction. The Georgia courts properly denied Petitioner's assertion that full faith and credit should be given to the Final Judgment of the Circuit Court of Alachua County.[26]

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[25] *Durfee* v. *Duke,* 375 U.S. 106, 110, 111; 84 S.Ct. 242, 11 L.Ed.2d 186 (1963).

[26] This Court cites ALI, Restatement, Conflict of Laws, § 451(2) in *Durfee.* This Section calls for honoring a court's jurisdictional determination "unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond jurisdiction." Here, clearly, is a case in which the policy underlying res judicata is outweighed by the policy against permitting the court to act beyond jurisdiction. If one state, under the UCCJA, cannot resist an improper taking of jurisdiction by another state, the effect of the Act is considerably diminished. *Webb* v. *Webb* would fall into several of the exceptions listed in § 451(2).

D. The Final Judgment of the Circuit Court of Alachua County, Florida, is not entitled to full faith and credit in Georgia because strong public policy in Georgia, as expressed in its enactment of the UCCJA (Ga. Code 74-501 to 74-525), would reject the notion that Florida had jurisdiction to modify the Georgia decree.

There are other doctrines pertaining to full faith and credit which the Amici Curiae argue would support the Georgia decision. The violation of the terms of the UCCJA should exempt the State of Georgia from giving full faith and credit to the Florida order. In the recent case of *Nevada* v. *Hall,* 99 S. Ct. 1182, 1189 (1979), this Court stated that Article IV, Section 1 of the *Constitution of the United States* does not require a state "to enforce even the judgment of another state" if it would violate its own policies or statutes.

Webb v. *Webb* involves two states which have adopted identical legislation, designed to curtail a specific problem—the proliferation of interstate child custody disputes. Both have adopted the policies expressed in Section 1 of the UCCJA.[27] Each state adopts the UCCJA, expecting to give the appropriate recognition to the decrees of sister states and to enforce them. It is a concomitant expectation that similar treatment be accorded their own custody decrees in other UCCJA states.

The UCCJA gives substance to these expectations in a variety of ways. In Section 6, a court of one enacting state must give way to the proceedings of a second state, even though jurisdiction may be found in the first state, so long as a proceeding in the second state has commenced, pursuant to appropriate jurisdiction under Section 3.[28] Under Section 6(b), each court subject to the UCCJA must scrutinize the pleadings and consult the child custody registry to look for pending proceedings. If it finds evidence of another proceeding, the court has to direct an inquiry to the state in which that

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[27] West's F.S.A. 61.1304; Ga. Code 74-502.

[28] West's F.S.A.; Ga. Code *supra* note 7.

proceeding is taking place. Even if a court does not find that a prior proceeding is taking place, it can direct litigants to a more convenient forum, under Section 7.[29] Under Section 8, a court may give way to another court if petitioners come to the first court with unclean hands.[30] This brief has already noted the strong restrictions on modification of out-of-state decrees, and the provisions which aid sister states in the enforcement of their decrees. The broad powers to communicate and cooperate interstate in Sections 18, 19, 20, 21 and 22, only, remain to be noted.[31] The potential for improved judicial relations, as well as improved handling of child custody matters, is unprecedented.

It follows that a state faced with judicial acts in a sister state, which fall short of the policies of the UCCJA, should not be required to give full faith and credit. Georgia should not be required to give full faith and credit to the Florida order.

E. Even if the Final Judgment of the Circuit Court of Alachua County, Florida, was made with subject matter jurisdiction, that would not preclude Georgia from modifying the decree, since change of circumstances was not litigated in Florida and, therefore, was not res judicata, and it could be considered in Georgia under the doctrines of *Halvey* v. *Halvey*, 330 U. S. 610 (1947).

Further, Georgia need not give full faith and credit to the Florida order, under the very specific rulings of *Halvey, Kovacs* and *Ford.*[32] Under the rule of *Halvey,* what Florida may do, Georgia may do. In Florida, the general rule for modification of child custody decrees is:[33]

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[29] West's F.S.A. 61.1316; Ga. Code 74-508.

[30] West's F.S.A. 61.1310; Ga. Code 74-509.

[31] West's F.S.A. 61.1338 to 61.1346; Ga. Code 74.519 to 74-523.

[32] *Halvey, Kovacs, Ford supra* note 5.

[33] *Sanders* v. *Sanders,* Fla. App. 376 So. 2d 880, 882 (1979). *Sanders* is the leading case in the appellate district which includes Alachua County.

> To warrant modification of a child custody award, there must be competent, substantial evidence that (1) there has been a substantial or material change in the condition of the parties and (2) that the best welfare of the child will be promoted by a change of custody.

This has been the rule, by the great weight of authority, at least since 1947.[34]

Florida regards as res judicata "all matters involved and known at the time of decree."[35] However, there is no indication from the record that change in the condition of the parties was, in fact, considered in the Florida court. The Petitioner's own complaint in the Florida court does not allege any change in the condition of the parties, nor does the order of the court indicate that change of circumstances influenced its order.[36] The order of the Florida court only finds "in the best interest of the child."[37] But Florida law distinctly requires an initial finding of changed circumstances.[38] Since the issue of changed circumstances was not considered in the Florida court and competent, substantial evidence was not heard, the matter cannot be res judicata in Florida. Under the rule of *Halvey,* there is nothing to preclude the Georgia court from considering the issue.

F. Conclusion.

If this Court grants full faith and credit to the Florida order, it will prove, once again, how difficult it is to relieve the plight of children caught up in custody disputes. Full faith and credit to the Florida order would negate the most important feature of the UCCJA—the restriction on modification. By the

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[34] *Belford* v. *Belford,* Sup. Ct. of Fla., Div. B, 32 So. 2d 312, 313 (1947); *Bennett* v. *Bennett,* Sup. Ct. of Fla., Div. B, 73 So. 2d 274, 278 (1954); *Avery* v. *Avery,* Fla. App. 314 So. 2d 198, 200 (1975); *Stricklin* v. *Stricklin,* Fla. App. 383 So. 2d 1183, 1184 (1980).

[35] *Belford supra,* at page 314; *Avery supra,* at page 200.

[36] Petition *supra* note 12; Final Judgment *supra* note 14.

[37] *Ibid.*

[38] *Sanders supra* note 33.

terms of the UCCJA, Florida has no jurisdiction to modify the Georgia decree. If the Florida order is upheld, Florida and other states would be able to modify out-of-state decrees, again, with impunity. The home state or substantial contacts restrictions in the UCCJA would prove only minor barriers if modification becomes possible. Such a decision would be a severe setback for those states which have passed the UCCJA.

This Court should, also, be aware that Congress has passed new legislation, signed by the President on December 28, 1980, which provides new perspective on full faith and credit for child custody decrees. Although not applicable in this case, the "Parental Kidnapping Prevention Act of 1980" accords with the UCCJA on modification of child custody decrees.[39] If another forum than the initial forum modifies a decree, the modification would receive full faith and credit only if the initial forum has declined or lost jurisdiction, exactly as the UCCJA requires. The new Act of Congress should encourage this Court to allow the UCCJA to rule between Georgia and Florida, and to deny full faith and credit to the Final Judgment of the Court of Alachua County, Florida.

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[39] 96th Congress, 2d Sess., H.R. 8406, § 8.

II.

EVEN THOUGH THE FINAL JUDGMENT OF THE CIRCUIT COURT, ALACHUA COUNTY, FLORIDA, IS NOT ENTITLED TO FULL FAITH AND CREDIT IN GEORGIA, IT SHOULD NOT BE DENIED FULL FAITH AND CREDIT BECAUSE THE FLORIDA COURT LACKED PERSONAL JURISDICTION OVER THE RESPONDENT.

A. Florida jurisdiction was based on Section 3(a)(1) and (2) of the UCCJA, and meets the requisite test of "traditional notions of fair play and justice" under the 14th Amendment of the *Constitution of the United States.*

In 1953, in *May* v. *Anderson,* 345 U.S. 528, this Court denied full faith and credit because a court in Wisconsin did not have personal jurisdiction over a parent in Ohio. *May* v. *Anderson* relied, principally, upon *Estin* v. *Estin,* 334 U.S. 541, 548, 92 L.Ed. 1561, 68 S.Ct. 1213 (1948) and *Krieger* v. *Krieger,* 334 U.S. 555, 92 L.Ed. 1572 (1948) for this proposition:[40]

> But we are aware of no power which the state of domicile of the debtor has to determine the personal rights of the creditor in the intangible unless the creditor has been personally served or appears in the proceeding.

If a parent can avoid personal service by leaving the jurisdiction, then he may forever keep the matter of the child's custody in doubt.

The problem that must be overcome is the problem of jurisdiction over the out-of-state parent. The UCCJA solves the problem in Section 12:[41]

> A custody decree rendered by a court of this State which had jurisdiction under Section 3 binds all parties who have

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[40] See, also, *Pennoyer* v. *Neff,* 95 U.S. 741, 24 L.Ed. 565 (1878).

[41] West's F.S.A. 61.1326; Ga. Code 74-513.

> been served in this State or notified in accordance with Section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

The Comment to Section 13 states:[42]

> This is in accord with a common interpretation of the inconclusive decision in *May* v. *Anderson.* Under this interpretation, a state is permitted to recognize a custody decree of another state, regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met.

The continuing life of *May,* however, has the effect of casting in doubt the entire validity of notice and service of process upon out-of-state litigants in child custody cases. The plurality opinion is not clear on its grounds. The UCCJA is drafted on the assumption that Justice Frankfurter's concurring opinion correctly interprets the plurality opinion:[43]

> What is decided—the only thing the Court decides—is the Full Faith and Credit Clause does not require Ohio, in disposing of the custody of children in Ohio, to accept, in the circumstances before us, the disposition made in Wisconsin. The Ohio Supreme Court felt itself so bound. The Court does not decide that Ohio would be precluded from recognizing, as a matter of local law, the disposition made by the Wisconsin court. For Ohio to give respect to the Wisconsin decree would not offend the Due Process Clause.

But the ambiguity of the case continues to plague child custody decisions in the states.

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[42] NCCUSL *supra* note 1, at page 20.

[43] *May supra* note 5, at pages 535, 536.

However, this Court has provided new perspective on interstate jurisdiction under the 14th Amendment to the *Constitution of the United States* in *Shaffer* v. *Heitner,* 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2869 (1977); *Kulko* v. *Super. Ct.,* 436 U.S. 84, 56 L.Ed.2d 132, 98 S.Ct. 1690 (1978); *Worldwide Volkswagen* v. *Woodson,* 100 S.Ct. 559 (1980); *Rush* v. *Savchuk,* 100 S.Ct. 571 (1980). These cases eliminate the artificial distinction between jurisdiction in personam and in rem, as created in *Pennoyer,* and rely upon principles of "traditional notions of fair play and substantial justice" as expressed, initially, in *International Shoe* v. *Washington,* 326 U.S. 310, 316, 90 L.Ed. 45, 66 S.Ct. 154 (1945).

Personal jurisdiction under these cases depends upon "minimum contacts" between the parties, the litigation, and the forum, and the capacity to give adequate notice to parties to an action.[44] It is "traditional notions of fair play and justice" which are key to determining proper jurisdictional tests, and flexibility among these factors is the expected result. For example, minimum contacts between the defendant and the forum are not an absolute prerequisite:[45]

> We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standards of fairness.

It is an interesting question whether Respondent's single act in taking the child from Florida to Georgia is an affiliating circumstance, a "minimum contact," which vests personal jurisdiction in Florida. This Court has been reluctant to allow a single transaction to be the basis for jurisdiction. In *International Shoe,* activities of the defendant were systematic and continuous.[46] In *Kulko,* the bare act of stopping in California to

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[44] *Shaffer* v. *Heitner,* 433 U.S. 186. See: Bodenheimer and Neeley-Kvarme, "Jurisdiction over Child Custody and Adoption After Shaffer and Kulko," 12 U.C.D. Law Rev. 229.

[45] *Shaffer supra,* at page 208.

[46] *International Shoe* v. *Washington,* 326 U.S. 310 (1945).

get married was not a sufficient affiliating circumstance to give California jurisdiction over the defendant in an action to modify support payments.[47] In *Rush*, the fact that the defendant's insurer was continuously present in a state did not, necessarily, give the state jurisdiction without other contact between the state and the litigation.[48] One contact, even if it involves taking a child, seems a thin basis for personal jurisdiction.

Of course, the Florida court took jurisdiction, as provided in the UCCJA.[49] The UCCJA bases jurisdiction primarily on the child's home state or former home state where significant contacts remain. Under the UCCJA, that would have been enough to give Florida initial jurisdiction, *if there had been no initial decree elsewhere, and modification jurisdiction, if Georgia had declined or lost jurisdiction.* This Court has not ruled that the presence of a child and a parent in one state gives jurisdiction over a parent in another state, there being no other contacts with the forum.[50]

However, child custody cases are unique. They resemble child support cases because provision must be made for modification subsequent to an initial decree. But child support cases concern only money.[51] Child custody cases concern the child's home and the security of his or her surroundings. *May* is, rightfully, criticized for treating children as property. Inanimate property is not concerned about its situs. Children are concerned about their homes, and must be recognized as persons. It is welcome to find in *Shaffer, Kulko, Worldwide Volkswagen* and *Rush* principles which can allow the recognition of the child as a person.

The Amici Curiae submit that the UCCJA meets the tests of "traditional notions of fair play and justice" and that it

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[47] *Kulko* v. *Super. Ct.*, 436 U.S. 84, 93 (1978).

[48] *Rush* v. *Savchuk*, 100 S.Ct. 571, 575 (1980).

[49] Final Judgment *supra* note 14.

[50] *Kulko supra* note 47.

[51] See Bodenheimer and Neeley-Kvarme *supra* note 44.

comports with the most stringent notions of due process under the 14th Amendment to the *Constitution of the United States.* Due process "depends rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws."[52] It requires a careful balancing of interests, of the relationship between the parties, the forum and the litigation.[53]

The forum state's interest in adjudicating the dispute is part of the analysis.[54] This Court has included "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental substantive social policies."[55] This Court should apply these principles and reject, once and for all, the ambiguities of *May* for the sounder principles of the UCCJA.

The focal point of the UCCJA is the child. It emphasizes the connection between the forum and the litigation. Section 3(a)(1) and (2) of the UCCJA is the relevant Section.[56] Jurisdiction depends, essentially, upon a finding that a state is the home state, or former home state, with which substantial contacts remain. Of course, jurisdiction requires adequate notice, and opportunity to appear on the part of the defendant.[57]

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[52] *Shaffer supra* note 44, at page 204.

[53] *Ibid.*

[54] *Worldwide Volkswagen* v. *Woodson,* 100 S.Ct. 559, 564 (1980).

[55] *Ibid.*

[56] The analysis is not extended to Section 3(a)(3) and (4) because these paragraphs are based on different factors and are not material to the assertions of the Petitioner. They are the emergency jurisdictional provisions. Section 3(a)(4) has no application, whatsoever, in this case. Section 3(a)(3) may have had a relevant basis, in Florida, if Florida had not already had a basis for jurisdiction in Section 3(a)(1) and (2).

[57] NCCUSL, *UCCJA,* §§ 4, 5; West's F.S.A. 61.131, 61.1312; Ga. Code 74-506, 74-507.

Section 3(a)(1) and (2) serves the best interests of children. Since a court with substantial evidence pertaining to a child's home will likely make the most informed decision concerning custody, it is in the best interests of the child to limit jurisdiction to those forums with that evidence. In most cases, Section 3(a)(1) and (2) will also accord with the convenience of parties. At least one party and the child will find the forum convenient. But, the need to decide the child's custody in a forum with substantial evidence concerning its home overrides some inconvenience to at least one party.

Section 3(a)(1) and (2) also serves the interests of the forum. The states have a clear interest in the welfare and care of children, as this Court has noted. That interest is strongest in the state which the child identifies as home, or which is a former home with which substantial contacts remain. Limiting jurisdiction over custody issues to those states which meet the requirements of Section 3(a)(1) and (2) of the UCCJA is a rational means for identifying and protecting individual state interests.

In addition, the UCCJA represents a specific interest of the interstate judicial system. No question has assailed state courts and litigants quite like the one of interstate child custody disputes. Limiting jurisdiction, as the UCCJA does in Section 3(a)(1) and (2), reduces conflict between state courts. The UCCJA, by its other sections, further limits the modification of out-of-state decrees, and requires their enforcement. It, also, mandates interstate communication between courts. The UCCJA offers states "the most efficient resolution of controversies."

Further, this Court has recognized that contact between the litigation and the forum should take precedence over contact between the defendant and the forum in certain instances. In *Rush,* the defendant's insurer was continously present, and doing business, in the forum state chosen by the plaintiff.[58] It is

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[58] *Rush supra* note 48.

unlikely that the defendant would have been inconvenienced, except as to the central choice of law question in the case, by defending in that forum state. Even then, litigating in the forum chosen by the plaintiff did not necessarily resolve the choice of law question in the plaintiff's favor. Yet, this Court rejected jurisdiction in the plaintiff's forum, because the forum did not have sufficient contact with *the litigation.*[59] One would assume that lack of evidence concerning issues to be litigated would be a principal reason for such a holding. This Court has, clearly, recognized the importance of contact between the forum and the litigation, and should give it strong weight in *Webb* v. *Webb,* as well.

To rule in favor of jurisdiction based on Section 3(a)(1) and (2) of the UCCJA is, also, in accord with this Court's position in *Stanley* v. *Illinois,* 405 U.S. 645, 657, 92 S.Ct. 1208, 31 L.Ed. 551 (1972), that "extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined .... The Illinois law .... provides for personal service, notice by certified mail, or notice by publication when personal or certified mail service cannot be held...."

May v. *Anderson* seems, clearly, outdated in the perspective of these cases and the UCCJA. It rests, solely on distinctions between in personam and in rem jurisdiction, and the rigid determinations of jurisdiction which *Pennoyer* v. *Neff* required. When these distinctions disappear, labeling rights in a child as personal rights, with incidents for the determination of jurisdiction, makes little sense. The question, now, is "fundamental fairness" for all parties. This Court should put aside *May* and turn to the broader perspectives of its rulings in *Shaffer, Kulko, Worldwide Volkswagen,* and *Rush.* At the same time, in the perspective of these cases, it must recognize the wisdom and balance of the UCCJA.

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[59] *Rush supra* note 48, at page 578.

B. If this Court adopts the position urged by the Petitioner—that the Respondent had sufficient "minimum contact" with the forum based on his taking of the child in Florida and transporting it into Georgia—it risks subjecting children to further forum shopping and child-snatching because of the transitory character of jurisdiction so established.

This Court has, clearly, in cases from *International Shoe* to *Rush,* provided for transitory actions in the U. S. At the same time, it has said that the sovereign integrity of the states shall be honored:[60]

> Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try cases in their courts.

The Amici Curiae assert that the UCCJA better balances these interests than a bare minimum contacts rule can.

People who separate and divorce often go to separate states during the period in which the marriage dissolves. The children are naturally part of the migration. Principles of jurisdiction must, in fact, take these migrations into account.

It would be a mistake, though, to compare transitory actions in the context of contract or tort litigation with child custody disputes. Transitory actions are allowed for "the plaintiff's interest in obtaining convenient and effective relief."[61] Minimum contacts, with defendants, rest, however, upon protection of defendants and their convenience "to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system," and so that defendants don't face "the burdens of litigating in a distant and inconvenient forum."[62]

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[60] *Worldwide Volkswagen supra* note 54.

[61] *Ibid.*

[62] *Ibid.*

These rules make sense for a local plaintiff dealing with a multi-state corporate defendant when the corporate defendant sends salesmen to deal with the plaintiff.[63] It would be hard to require a plaintiff to sue the defendant only at its situs. Many plaintiffs would be effectively cut off from a remedy. In tort actions, it seems fair to allow defendants, who are likely to be insured, to be sued where injury occurs or where the plaintiff is domiciled, providing that defendant and the litigation have some contact with the forum.

In child custody disputes, the relationship between plaintiff and defendant is quite different. Both are parents or persons acting as parents, often with co-equal rights of custody as they enter the litigation. The litigation considers harm to no one, nor compensation of any kind. It decides the right to custody of children, third persons in whose best interests the decision must be made. Indeed, children may have a guardian ad litem or individual legal counsel in many states, against the named plaintiff and defendant.[64] The litigation flows, not between the plaintiff and defendant, as named, but out to the child. The child's home is the gravamen of the action.

There is great risk and danger that emphasizing "minimum contacts" with defendants will ignore the child. Far from desiring more transitory actions for the convenience of plaintiffs, with some guarantee of affiliating circumstances to protect the defendant, the problem before this Court is litigation too transitory in character for the best interests of children. Before the UCCJA, the custom in the states was to take jurisdiction on the presence of the child.[65] Children suffered. The states' own broad interests in the welfare of children suffered. Due process, for children, became a cipher. A rule which relies on "minimum contacts" with the defendant may even be more transitory than presence of the child.

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[63] *International Shoe supra* note 46.

[64] See: NCCUSL, *Uniform Marriage and Divorce Act*, § 310 (1973).

[65] Clark, *Law of Domestic Relations*, 322-23 (1968).

Take the Petitioner's assertion that personal jurisdiction over the Respondent should be based on the single transaction of entering one state to take a child to another state, as an example. If the child had been taken from Petitioner in Louisiana, on the alleged "camping trip," would she then really wish to litigate custody in Louisiana? Yet, that is the result of her "minimum contacts" argument. Against this extreme notion of transitory jurisdiction, the UCCJA stands as a bulwark of stability for the child.

A fair system fixes jurisdiction in one place that is in the best interests of the child. Then it attempts to serve the convenience of the parties as adequately as possible. In order to mitigate problems of inconvenience, the UCCJA provides for taking testimony in other states, for obtaining hearings and the collection of social studies for other states, and for assistance to the courts of other states by orders to give evidence in another state. It allows a state with jurisdiction to decline its exercise if the forum is inconvenient, and to communicate with a second court to transfer a case. The statute limits the transitory character of these cases, and assists out-of-state litigants. But above all else, it protects children.

The Amici Curiae assert that "traditional notions of fair play and substantial justice" are the basis for the UCCJA. The provisions of the UCCJA provide the finest example of "particularized rules" for taking jurisdiction. A bare "minimum contacts" test cannot meet these "traditional notions" as well.

Webb v. *Webb* is not the same situation as found in *Kulko* v. *Super. Ct.*[66] Child support judgments are money judgments. Child custody and the home of the child were not in dispute. The state's own interest in the child's home is even more intense than in support, because the stability of the home is the guarantee of the stability of its citizens. Unlike *Kulko,* the

[66] *Kulko supra* note 47.

state's interests in this case are met through a Uniform Act that focuses the state's interests through the exercise of jurisdiction. The distinction is material.

C. Conclusion.

May v. *Anderson* should be consigned to history. This Court should, also, refrain from applying a minimum contacts requirement which would undo the work done, already, by the exercise of comity in the best interests of children. This Court should recognize that personal jurisdiction over the father was not needed for the Florida litigation. Florida, however, did not have subject matter jurisdiction for the reasons set out earlier in this Brief. Florida should have respected the jurisdiction of Georgia, the child's former home state where significant contact with the child remains.

Respectfully submitted,

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APPENDIX

UNIFORM CHILD CUSTODY JURISDICTION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-SEVENTH YEAR
AT PHILADELPHIA, PENNSYLVANIA
JULY 22-AUGUST 1, 1968

WITH
PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MEETING AT PHILADELPHIA, PENNSYLVANIA
August 7, 1968

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction Act was as follows:

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Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
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Uniform Child Custody Jurisdiction Act

Prefatory Note

There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find—and often do find—a more sympathetic ear for their plea for custody. The party deprived of the child may then resort to similar tactics to recover the child and this "game" may continue for years, with the child thrown back and forth from state to state, never coming to rest in one single home and in one community.

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

This unfortunate state of affairs has been aided and facilitated rather than discouraged by the law. There is no statutory law in this area and the judicial law is so unsettled that it seems to offer nothing but a "quicksand foundation" to stand on. See Leflar, American Conflicts

Law 585 (1968). See also Clark, Domestic Relations 320 (1968). There is no certainty as to which state has jurisdiction when persons seeking custody of a child approach the courts of several states simultaneously or successively. There is no certainty as to whether a custody decree rendered in one state is entitled to recognition and enforcement in another; nor as to when one state may alter a custody decree of a sister state.

The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules. See Leflar, American Conflicts Law 585-6 (1968) and Leflar, 1967 Annual Survey of American Law, Conflict of Laws 26 (1968). Also, since the United States Supreme Court has never settled the question whether the full faith and credit clause of the Constitution applies to custody decrees, many states have felt free to modify custody decrees of sister states almost at random although the theory usually is that there has been a change of circumstances requiring a custody award to a different person. Compare *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); and see Comment, Ford v. Ford: Full Faith and Credit To Child Custody Decrees? 73 Yale L. J. 134 (1963). Generally speaking, there has been a tendency to over-emphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made. Compare Clark, Domestic Relations 326 (1968).

Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences. A court of one state may have awarded custody to the mother while another state decreed simultaneously that the child must go to the father. See *Stout v. Pate*, 209 Ga. 786, 75 S.E. 2d 748 (1953) and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953), cert. denied in both cases 347 U.S. 968, 74 S. Ct. 744, 776, 98 L. Ed. 1109, 1110 (1954); *Moniz v. Moniz*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956); and *Sharpe v. Sharpe*, 77 Ill. App. 2d 295, 222 N.E. 2d 340 (1966). In situations like this the litigants do not know which court to obey. They may face punishment for contempt of court and perhaps criminal charges for child stealing in one state when complying with the decree of the other. Also, a custody decree made in one state one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues. See *Com. ex rel. Thomas v. Gillard*, 203 Pa. Super. 95, 198 A 2d 377 (1964); *In Re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 774 (1966); *Berlin v. Berlin*, 239 Md. 52, 210 A. 2d 380 (1965); *Berlin v. Berlin*, 21 N.Y. 2d 371, 235 N.E.

2d 109 (1967), cert. denied 37 L.W. 3123 (1968); and *Batchelor v. Fulcher*, 415 S.W. 2d 828 (Ky. 1967).

In this confused legal situation the person who has possession of the child has an enormous tactical advantage. Physical presence of the child opens the doors of many courts to the petitions and often assures him of a decision in his favor. It is not surprising then that custody claimants tend to take the law into their own hands, that they resort to self-help in the form of child stealing, kidnapping, or various other schemes to gain possession of the child. The irony is that persons who are good, law-abiding citizens are often driven into these tactics against their inclinations; and that lawyers who are reluctant to advise the use of maneuver of doubtful legality may place their clients at a decided disadvantage.

To remedy this intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law, uniform legislation has been urged in recent years to bring about a fair measure of interstate stability in custody awards. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795 (1964); Ratner, Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183 (1965); and Ehrenzweig, The Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1 (1965). In drafting this Act, the National Conference of Commissioners has drawn heavily on the work of these authors and has consulted with other leading authorities in the field. The American Bar Association has taken an active part in furthering the project.

The Act is designed to bring some semblence of order into the existing chaos. It limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family. See Section 3. It provides for the recognition and enforcement of out-of-state custody decrees in many instances. See Sections 13 and 15. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court under certain conditions. See Section 14. Access to a court may be denied to petitioners who have engaged in child snatching or similar practices. See Section 8. Also, the Act opens up direct lines of communication between courts of different states to prevent jurisdictional conflict and bring about interstate judicial assistance in custody cases.

The Act stresses the importance of the personal appearance before the court of non-residents who claim custody, and of the child himself, and provides for the payment of travel expenses for this purpose. See Section 11. Further provisions insure that the judge receives necessary out-of-state information with the assistance of courts in other states. See Sections 17 through 22.

Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important *which* court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

The Act is not a reciprocal law. It can be put into full operation by each individual state regardless of enactment of other states. But its full benefits will not be reaped until a large number of states have enacted it, and until the courts, perhaps aided by regional or national conferences, have come to develop a new, truly "inter-state" approach to child custody litigation. The general policies of the Act and some of its specific provisions apply to international custody cases.

SECTION 1. [*Purposes of Act; Contruction of Provisions.*]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

COMMENT

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

SECTION 2. [*Definitions.*] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonweath of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, Domestic Relations 576-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.

SECTION 3. [*Jurisdiction.*]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

COMMENT

Paragraphs (1) and (2) of subsection (a) establish the two major bases for jurisdiction. In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 and 7 are used to assure that only one state makes the custody decision.

"Home state" is defined in section 2(5). A 6-month period has been selected in order to have a definite and certain test which is at the same time based on a

reasonable assumption of fact. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 818 (1964) who explains:

> "Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home."

Subparagraph (ii) of paragraph (1) extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. The main objective is to protect a parent who has been left by his spouse taking the child along. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. See also subsection (c).

Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test. The first situation arises, for example, when a family has moved frequently and there is no state where the child has lived for 6 months prior to suit, or if the child has recently been removed from his home state and the person who was left behind has also moved away. See paragraph (1), last clause. A typical example of alternative jurisdiction is the case in which the stay-at-home parent chooses to follow the departed spouse to state 2 (where the child has lived for several months with the other parent) and starts proceedings there. Whether the departed parent also has access to a court in state 2, depends on the strength of the family ties in that state and on the applicability of the clean hands provision of section 8. If state 2, for example, was the state of the matrimonial home where the entire family lived for two years before moving to the "home state" for 6 months, and the wife returned to state 2 with the child with the consent of the husband, state 2 might well have jurisdiction upon petition of the wife. The same may be true if the wife returned to her parents in her former home state where the child had spent several months every year before. Compare Willmore v. Willmore, 273, Minn. 537, 143 N.W. 2d 630 (1966), cert. denied 385 U.S. 898 (1966). While jurisdiction may exist in two states in these instances, it will not be *exercised* in both states. See sections 6 and 7.

Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be an intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.

Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than to proliferate it. The first clause of the paragraph is important: jurisdiction exists only if it is in the *child's* interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction. See Clark, Domestic Relations 578 (1968).

Paragraph (3) of subsection (a) retains and reaffirms *parens patriae* jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subseqent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

SECTION 4. [*Notice and Opportunity to be Heard.*] Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft sec. 69 (1967); and compare Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

SECTION 5. [*Notice to Persons Outside this State; Submission to Jurisdiction.*]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court [including publication, if other means of notification are ineffective].

(b) Notice under this section shall be served, mailed, or delivered, [or last published] at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

COMMENT

Section 2.01 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950) and Schroeder v. City of New York, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See Mullane v. Central Hanover Bank and Trust Co., *supra;* and see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Rev. 241, 277, 286-87. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices *in addition to* the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

SECTION 6. [*Simultaneous Proceedings in Other States.*]

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry

established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

SECTION 7. [*Inconvenient Forum.*]

(a) A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the

court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.

(d) Before determing whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, of if the court which would have jurisdiction in the other state is not certainly known, shall transmit the informa-

tion to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 84 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (e) is derived from Wis. Stat. Ann., sec. 262.19 (1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis. Stat. Ann., sec. 262.20 Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as G.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

SECTION 8. [*Jurisdiction Declined by Reason of Conduct.*]

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to

custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, Interstate Recognition of Custody Decrees, 51 Mich. L. Rev. 345 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See Fain, Custody of Children, The California Family Lawyer I, 539, 546 (1961); Ex Parte Mullins, 26 Wash. 2d 419, 174 P. 2d 790 (1946); Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950); and Leathers v. Leathers, 162 Cal. App. 2d 768, 328 P. 2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the wellbeing of the child, it is often not applied. See Smith v. Smith, 135 Cal. App. 2d 100, 286 P. 2d 1009 (1955) and In re Guardianship of Rodgers, 100 Ariz. 269, 413 P. 2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the huband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated-both husband and wife as a rule have a right to custody until a court determination is made-but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention refusal of jursdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare Smith v. Smith and In Re Guardianship of Rodgers, *supra;* and see In Re Walter, 228 Cal. App. 2d 217, 39 Cal. Rpts. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection

(b) makes refusal of jurisdiction entirely discretionary in this situation because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.

SECTION 9. [*Information under Oath to be Submitted to the Court.*]

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

SECTION 10. [*Additional Parties.*] If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or

visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this State he shall be served with process or otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

SECTION 11. [*Appearance of Parties and the Child.*]

[(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.]

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorises the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision—not only in their juvenile court laws—may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalise the expense if this is appropriate under the circumstances.

SECTION 12. [*Binding Force and Res Judicata Effect of Custody Decree.*] A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from support actions (see section 2(2) *supra*), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 79 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953), which relates to interstate recognition rather than in-state validity of custody decrees. See Ehrenzweig and Louisell, Jurisdiction in a Nutshell 76 (2d ed. 1968); and compare Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 195 (1957). On May v. Anderson, *supra*, see comment to section 13.

Since a custody decree is nomally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

SECTION 13. [*Recognition of Out-of-State Custody Decrees.*] The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 828 (1964).

Although the full faith and credit clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognise and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, *supra*. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, Ford v. Ford: Full Faith and Credit to Child Custody Decrees? 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognise and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 79 and comment thereto, p. 298 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in May v. Anderson; and compare Clark, Domestic Relations 323-26 (1968), Goodrich, Conflict of Laws 274 (4th ed. by Scoles, 1964); Stumberg, Principles of Conflict of Laws 325 (3rd ed. 1963); and Comment, The Puzzle of Jurisdiction in Child Custody Actions, 38 U. Colo. L. Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, Inter-state Recognition of Custody Decrees, 51 Mich. L. Rev. 345, 370 (1953). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See Berlin v. Berlin, 21 N.Y. 2d 371, 235 N.E. 2d 109 (1967), and Stout v. Pate, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953); Compare Moniz v. Moniz, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

SECTION 14. [*Modification of Custody Decree of Another State.*]

(a) If a court of another state has made a custody decree, a

court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See People ex rel. Halvey v. Halvey, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 821-2(1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6-1/2 months (3-1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See Clark, Domestic Relations 322-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare Brengle v. Hurst, 408 S. W. 2d 418 (Ky. 1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 8(b) and state 1 would have modification jurisdiction in any event under section 3(a) (4). Compare Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction *now*, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the

decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also Sharpe v. Sharpe, 77 Ill. App. 295, 222 N.E. 2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcipts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant" says Paulsen, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L. Rev. 212, 226 (1960). See also Ehrensweig, the Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1, 6-7 (1965); and Ratner, Legislative Resolution of the Interstate Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what conditions it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

SECTION 15. [*Filing and Enforcement of Custody Decree of Another State.*]

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any [District Court, Family Court] of this State. The clerk shall treat the decree in the same manner as a custody decree of the [District Court, Family Court] of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognized are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to

modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 832-33 (1964).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 Armstrong, California Family Law 328 (1966 Suppl.), and *Crocker v. Crocker*, 195 F. 2d 236 (1952).

SECTION 16. [*Registry of Out-of-State Custody Decrees and Proceedings.*] The clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 35 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk of the [District Court, Family Court] of this State, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

SECTION 18. [*Taking Testimony in Another State.*] In addition to other procedural devices available to a party, any party to the

proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 326 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings, 64 Mich. L. Rev. 1 (1965). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

SECTION 19. [*Hearings and Studies in Another State; Orders to Appear.*]

(a) A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State; and to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].

(b) A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

SECTION 20 [*Assistance to Courts of Other States.*]

(a) Upon request of the court of another state the courts of this State which are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State [or may order social studies to be made for use in a custody proceeding in another state]. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced [and any social studies prepared] shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this State may voluntarily give his testimony or statement in this State for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 18 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02 (b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

SECTION 21. [*Preservation of Documents for Use in Other States.*] In any custody proceeding in this State the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents

until the child reaches [18, 21] years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

SECTION 22. [*Request for Court Records of Another State.*] If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19, and 14(b).

SECTION 23. [*International Application.*] The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees inolving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959) and Swindle v. Bradley, 240 Ark. 903, 403 S.W. 2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognised and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare Restatement of the Law Second, Con-

flict of Laws, Proposed Official Draft, sections 10, 92, 98, and 109(2) (1967). Compare also Goodrich, Conflict of Laws 390-93 (4th ed., Scoles, 1964).

[SECTION 24. [*Priority.*] Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

SECTION 25. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 26. [*Short Title.*] This Act may be cited as the Uniform Child Custody Jurisdiction Act.

SECTION 27. [*Repeal.*] The following acts and parts of acts are repealed:

(1)

(2)

(3)

SECTION 28. [*Time of Taking Effect.*] This Act shall take effect. . . . .